



Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period.

Statement of Results, Final Determination and Order

ECS 18/2016

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1 Introduction

On 30 March 2016, the Utilities Regulation and Competition Authority (URCA) issued a public consultation document entitled **“Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period”**(ECS 10/2016).¹ The consultation considered whether in accordance with the provisions of the Communications Act, 2009 ("Comms Act") and the Electronic Communications Sector Policy ("ECS Policy"), it would be necessary and proportionate for URCA to impose a Significant Market Power (SMP) obligation on the Bahamas Telecommunications Company Ltd. ("BTC") to provide national roaming services to the second cellular mobile operator ("NewCo2015 Limited") for an interim period of time during the build-out of its own cellular mobile network.

The consultation document provided an opportunity for members of the public, licensees and other interested parties to submit written comments to URCA. In summary, the consultation consisted of two main parts:

- URCA’s rationale for the Preliminary Determination on national roaming, including its SMP assessment of the wholesale market for national roaming services in The Bahamas; and
- URCA’s proposed wording for a Preliminary Determination and Draft Order on national roaming).²

The document also contained a number of questions to assist respondents in preparing their written comments on the consultation.

Initial responses to the consultation, and reply comments to responses received, were received from two parties, namely:

- BTC; and
- Cable Bahamas Ltd. ("CBL") on behalf of NewCo2015 Limited (NewCo).

The full text of all written submissions received can be found at www.urbahamas.bs. URCA wishes to thank BTC and CBL for their participation in the consultation process.

This present document sets out URCA's Final Determination and Order on national roaming, taking into account the comments received during the consultation period. In particular, URCA has determined that BTC should provide national roaming to NewCo for a restricted period of up to 24 months from the issuance date of NewCo’s Individual Operating Licence (IOL) and Individual Spectrum Licence (ISL). Broadly, this temporary obligation is intended to enable NewCo to offer its pre-paid and post-paid subscribers a range of mobile services in areas outside of its network coverage area. The obligation is

¹<http://www.urbahamas.bs/download/072284600.pdf>

²See Annex 1 of the consultation document.

uni-directional because NewCo is under no obligation to supply BTC with equivalent inputs to NewCo's own cellular mobile network and infrastructure. In preparing this document, URCA has given utmost consideration to all the substantive comments received from both licensees.

URCA expressly states that failure to respond 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 Cellular Mobile Liberalisation

NewCo is the second cellular mobile licensee in The Bahamas. Following a competitive selection process, on 30 June 2016, URCA pursuant to its licensing functions under section 114 of the Comms Act and in accordance with Section 5.2 of the RFP³ granted NewCo the following licences:

- an Individual Spectrum Licence (ISL);⁴ and
- an Individual Operating Licence (IOL).⁵

Both licences are national in scope and have been awarded for a term of fifteen (15) years, until 29 June 2031.

The IOL authorises NewCo to establish, maintain and operate an electronic communications network and provide carriage services. The IOL is a service neutral authorisation, which authorises the licensee to establish its network using any technology or combination of technologies, and to provide any electronic communications services in The Bahamas. The ISL authorises the exclusive use of specified bands of premium spectrum. The ISL is also technology neutral and unrestricted in that it will permit the use of the assigned spectrum for the deployment of any cellular mobile network technology.

NewCo is expected to build out its network in the coming months, in line with its licence obligations.

The publication of ECS 10/2016 for comments was in furtherance of the requirement of the Government, as set out in the ECS Policy for URCA:

“to ensure that all regulatory measures necessary for cellular liberalisation, are met and fulfilled in accordance with the timetable set for such liberalisation.”(Paragraph 89)

Given its legislative mandate in section 4 of the Comms Act to facilitate competition and promoting affordable access to carriage services in all regions of The Bahamas, URCA issued ECS 10/2016 on whether BTC should be under an obligation to provide national roaming to NewCo during its build-out

³Government's Request for Proposals to Operate a Cellular Mobile Network and Provide Cellular Mobile Services..

⁴<http://www.urbahamas.bs/download/005445500.pdf>

⁵<http://www.urbahamas.bs/download/005434200.pdf>

period and, if so, the SMP obligations to impose on BTC to ensure that all reasonable demand for the service is met on appropriate and proportionate terms or conditions during such interim period.

It should be noted that URCA is currently consulting under separate cover on other regulatory matters relating to mobile liberalisation. In particular:

- ECS 09/2016 determines the required changes to BTC’s Reference Access and Interconnection Offer (RAIO) due to mobile liberalisation.⁶
- ECS 16/2016 covers the proposed amendments to the ex-ante regulation of BTC’s retail mobile services, as set out in the Retail Pricing Rules for Non-Price Capped Services.⁷

1.2 Legislative Framework

URCA is issuing this Final Determination and Order in accordance with the relevant provisions of the Comms Act.

Section 5 of the Comms Act sets out a number of principles that should underlie regulation and other measures:

“All policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic communications policy objectives and shall comply with the following guidelines –

- (a) market forces shall be relied upon as much as possible as the means of achieving the electronic communications policy objectives*
- (b) regulatory and other measures shall be introduced –*
 - (i) where in the view of URCA market forces are unlikely to achieve the electronic communications policy objective within a reasonable time frame, and*
 - (ii) having due regard to the costs and implications of those regulatory and other measures on affected parties;*
- (c) regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory; and*
- (d) regulatory and other measures that introduce or amend a significant ... regulatory measure ... –*
 - (i) shall specify the electronic communications policy objective that is advanced by the policy or measure; and*
 - (ii) shall demonstrate compliance with the guidelines set out in paragraphs (a), (b), and (c).”*

⁶<http://www.urcabahamas.bs/download/055474300.pdf>
⁷<http://www.urcabahamas.bs/download/065196900.pdf>

Under the terms of section 39(1) of the Comms Act, URCA may at any time determine that a licensee has SMP which *“enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciably extent independently of its competitors, consumers and subscribers.”* SMP can be assessed using a number of criteria, as described in URCA's own methodology for SMP assessments.⁸

Under the terms of section 40 of the Comms Act, URCA may, among other things, choose to impose on SMP licensees:

- cost recovery and price control obligations, including obligations for cost orientation of prices;
- a requirement to publish a reference offer or offers ensuring equivalence of access and/or interconnection to any of those services and/or facilities in which the licensee has SMP, at tariffs based on the licensee's costs; and
- a requirement to share infrastructure, facilities and systems used for the provision of electronic communications services.

Apart from the section 40(1)(a) to (i) SMP conditions of the Comms Act, URCA may also introduce other measures as it *“may consider necessary in pursuance of the electronic communications policy objectives and the sector policy”*.⁹

Under the terms of section 40(4) of the Comms Act, SMP licensees shall -

- “(a) not unduly discriminate against particular persons or a particular description of persons in relation to the electronic communications services offered by them;*
- (b) provide technical specifications, or other relevant information about any interconnection, essential facilities or other mandated wholesale electronic communications services on a reasonable and timely basis, when the information is required by another licensee to provide its licensable services and when the information is not readily available from other sources; and*
- (c) not adopt technical specifications for a network that prevents interconnection or interoperability with a network of a competitor.”*

These non-market specific SMP obligations are supplemented by Condition 34 of the IOL issued to BTC and other licensees.

1.3 Consultation Process

Section 99 of the Comms Act sets out the procedures for issuing a Determination. In particular, sections 99(1)(a) and (b) of the Comms Act collectively prescribe that if, on its own motion, URCA has reason to

⁸ECS 20/2011 available at <http://www.urcabahamas.bs/download/059384700.pdf>

⁹Section 40(1)(j) of the Comms Act.

believe that a determination is necessary, it may make determinations relating to (among other matters):

- 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 sections 39(1) and 116(2).

Pursuant to section 99(2) of the Comms Act, in making any determination, URCA has to consult persons with sufficient interest under section 11 of the Comms Act and provide written reasons for its determination. Section 11(2) of the Comms Act prescribes that regulatory instruments referred to in section 13(2) of the Comms Act, shall be considered regulatory measures of public significance and under section 11(1), URCA shall afford persons with sufficient interest a reasonable opportunity to comment on URCA’s proposals. Under section 13(1) of the Comms Act:

“A regulatory and other measure is likely to be of public significance if it relates to electronic communications services or networks and can lead to one or more of the following —

- (a) involve a major change in the activities carried on by URCA under this Act;*
- (b) a significant impact on persons carrying on activities in those areas where URCA has functions under this Act; and*
- (c) a significant impact on the general public in The Bahamas.”*

1.4 Structure of the Remainder of this Document

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

- Section 2 – URCA’s Final Determination and Order on national roaming in The Bahamas.
- Section 3 - URCA’s responses to submissions received on the consultation questions relating to URCA’s Preliminary Determination (i.e., questions 1 to 8 of the consultation paper).
- Section 4– URCA’s responses to submissions received on consultation questions relating to the Draft Order (i.e., questions 9 to 18 of the consultation paper).
- Section 5- Conclusions.

2 URCA's Final Determination and Order on National Roaming

2.1 Final Determination

This is a Final Determination issued by the Utilities Regulation and Competition Authority ("URCA") pursuant to section 99 of the Communications Act, 2009.

The Determination imposes obligations on the Bahamas Telecommunications Company Ltd. (BTC) and therefore this Final Determination is addressed to BTC.

"WHEREAS,

- i) Section 5 of the Communications Act, 2009 ("Comms Act") mandates that *"All policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic communications policy objectives ..."*;
- ii) The electronic communications sector policy objectives as specified at section 4 of the Comms Act include furthering *"...the interests of consumers by promoting competition"* and furthering *"... the interests of persons in The Bahamas in relation to the electronic communications sector"*;
- iii) The Government at Paragraph 89 of the Electronic Communications Sector Policy ("ECS Policy") has urged URCA *"to ensure that all regulatory measures necessary for cellular liberalisation, are met and fulfilled in accordance with the timetable set for such liberalisation"*;
- iv) Section 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) Section 39(1) of the 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"*;
- vi) Pursuant to section 39(2) of the Comm Act URCA issued ECS 20/2011, the *"Methodology for Assessment of Significant Market Power (SMP) under section 39(2) and (3) of the Communications Act, 2009"* (the "SMP Methodology"¹⁰), containing criteria relating to the definition of markets in the electronic communications sector, and against which market power may be assessed;

¹⁰Also referred to as URCA's SMP Guidelines.

- vii) By the issuance of the “*Request for Proposals To Operate a Cellular Mobile Network and To Provide Cellular Mobile Services in The Bahamas*” (the RFP) on 13 November 2014, the Government commenced the process for the selection of a second cellular mobile operator to operate a cellular mobile network and provide cellular mobile services in The Bahamas (the “second cellular mobile operator” or “second cellular mobile provider”);
- viii) The incumbent cellular mobile operator (BTC) is currently the sole provider of cellular mobile services in The Bahamas and operates a network that provides services to the majority of populated areas in The Bahamas;
- ix) On the 30 June 2016 URCA pursuant to its licensing functions under section 114 of the Comms Act and in accordance with Section 5.2 of the RFP granted to NewCo2015 Limited (“NewCo” or the “second cellular mobile operator”) the following licences:
- an Individual Operating Licence (IOL); and
 - an Individual Spectrum Licence (ISL).

NewCo is expected to build out its network over the coming months, in line with its licence obligations;

- x) URCA having conducted a review of the market for wholesale mobile access and call origination on cellular mobile networks in The Bahamas in accordance with the Comms Act and the SMP Methodology considers that the development of competition in downstream (retail) cellular mobile markets could be enhanced by the ability of NewCo to be able to obtain national roaming services from BTC and ensuring that NewCo is able to, from the date of its launch of services, offer services throughout The Bahamas including in those areas where it has not yet constructed its own cellular mobile network facilities or infrastructure;
- xi) URCA considers it appropriate to make certain determinations regarding the definition of wholesale mobile markets, the existence of BTC having SMP in the identifiable wholesale mobile market, the extent to which *ex-ante* regulation is appropriate and proportionate in that relevant market; and,
- xii) Having considered the wholesale markets and made the relevant determinations for the wholesale market under consideration, URCA considers it proportionate and appropriate for the development of competition, that URCA impose a new remedy in those markets, namely national roaming for an interim period, until such time as NewCo has completed the roll-out targets for network coverage of The Bahamas as set out in its ISL.

URCA HEREBY DETERMINES that:

1. Relevant Market for National Roaming – “Wholesale Mobile Access and Call Origination”

A single national wholesale market is hereby defined for Mobile Access and Call Origination services (MACO) on cellular mobile networks in The Bahamas, which comprises:

- i) BTC’s self-supply of mobile access and call origination to its own downstream (retail) mobile business;
- ii) NewCo’s self-supply of mobile access and call origination over its own cellular mobile network and infrastructure; and
- iii) any supply of wholesale mobile access and call origination supplied to licensed third parties in The Bahamas, including the national roaming service provided to NewCo.

This market is defined on a technology neutral basis and thus includes any cellular mobile network technology (including GSM, HSPA, and LTE), which is currently or may in the future, be deployed by licensees for the purpose of operating a cellular mobile network and providing cellular mobile services in The Bahamas.

2. SMP Determination

BTC has significant market power (SMP) in the MACO services market in The Bahamas.

3. SMP Obligations Imposed on BTC

- a) BTC is required to comply with the non-market specific SMP obligations specified in section 40(4) of the Comms Act and Condition 34 of BTC's Individual Operating Licence (IOL).
- b) BTC shall be subject to the following additional *ex-ante* obligations for a period of up to twenty-four (24) months from the date on which the ISL is issued to NewCo, with any possible extensions to be considered only in limited circumstances where NewCo’s roll-out has been delayed for reasons beyond NewCo’s control:
 - i) BTC shall provide wholesale mobile access and call origination services (national roaming) on its cellular mobile network to NewCo, in all geographical areas and locations covered by BTC’s cellular mobile networks but where NewCo has not deployed its own cellular mobile network. The obligation for BTC to provide national roaming services to NewCo will expire no later than 24 months from the date on which the ISL is issued to NewCo, with any possible extensions to be considered only in limited circumstances where NewCo’s network roll-out has been delayed for reasons beyond NewCo’s control after NewCo has been granted its licences.
 - ii) In general, BTC should provide NewCo, as part of the national roaming obligation, all services enabling NewCo to offer the same range of retail mobile services which

NewCo offers to Customers in areas where it has built a cellular mobile network and infrastructure.

- iii) The minimum range of retail mobile services that the national roaming obligation should support include:
- a) All incoming calls to NewCo's pre-paid and post-paid mobile customers, irrespective of the origin of the call (i.e., fixed-to-mobile calls, on-net and off-net mobile-to-mobile calls, and incoming international calls).
 - b) All outbound calls from a NewCo pre-paid or post-paid mobile customers, irrespective of the destination of the call (i.e., mobile-to-fixed calls, on-net and off-net mobile-to-mobile calls, international outgoing calls, calls to voicemail and other special services in The Bahamas, such as emergency services, directory enquires, etc.).
 - c) All inbound and outbound mobile messaging services from or to NewCo's pre-paid and post-paid mobile customers, irrespective of their origination or destination.
 - d) Access to calling features for NewCo's pre-paid and post-paid mobile customers.
 - e) Access to Internet services (including LTE data access) for NewCo's pre-paid and post-paid mobile customers.
 - f) Termination of calls and messages to NewCo's customers while they are roaming on BTC's network.
- iv) For the avoidance of doubt, BTC is under no obligation to support international roaming agreements between NewCo and its foreign counterparts.
- v) BTC shall be under an obligation to provide to NewCo upon request, standard terms or conditions for national roaming services.
- vi) All National Roaming services provided by BTC which are within the scope of this obligation, shall be cost oriented and subject to URCA's review and approval. In particular, any termination services relating to National Roaming should be charged at the relevant mobile termination rates, as set out in BTC's RAIO. BTC shall determine its proposed "cost oriented" tariffs for all remaining National Roaming services and submit these to URCA for review and approval. As part of its review, URCA will seek to ensure that BTC's tariffs are compliant with this Determination and any other obligations imposed on BTC. BTC may determine its proposed cost oriented tariffs for wholesale mobile access and call origination services using any of the following techniques:
- Benchmarking analysis;
 - BTC's cost accounting information for the most recent period; and/or

- retail minus costs.
- vii) “Cost oriented” tariffs for National Roaming service should permit BTC to fully recover any efficiently incurred economic costs associated with the national roaming service.
- viii) In addition, tariffs for National Roaming service:
- may include a reasonable rate of return on capital efficiently employed; and
 - should be calculated using the nationwide average costs of calls, messages, and data services.
- ix) Tariffs for voice services should be expressed as a ‘per minute’ price and may be reasonably differentiated for peak and off-peak periods.
- x) Tariffs for data services should be charged according to usage or "by the bit".
- xi) Tariffs for messaging services should be priced on a “per message” or “per bit” basis, though URCA will examine carefully any justification for setting such tariffs on the latter basis.
- c) BTC is required to formulate standard terms and conditions for the National Roaming service, and to submit those terms and conditions for URCA’s review and approval **within fourteen (14) calendar days** of receiving a written request from NewCo for National Roaming services.
- d) The National Roaming service shall be provided by BTC to NewCo in accordance with any Orders or other regulatory measures pertaining thereto which URCA may make from time to time.
- e) Failure by any of the parties to comply with this Determination may result in URCA imposing sanctions in accordance with Part XVII of the Comms Act.

Stephen Breaux
Director of Electronic Communications
Utilities Regulation and Competition Authority
Dated: 22 July, 2016

2.2 Order

WHEREAS by a Final Determination dated 23 July, 2016 addressed to the Bahamas Telecommunications Company Ltd. (BTC) and to NewCo, URCA determined relevant markets, SMP and obligations relating to the provision of National Roaming services upon the introduction of competition in cellular mobile services in The Bahamas.

AND WHEREAS the Government of The Bahamas having completed the process for the selection of an entity to operate a cellular mobile network and provide cellular mobile services in The Bahamas and Cable Bahamas Limited having emerged as the successful applicant in that process; on 30 June, 2016 URCA issued an Individual Operating Licence (IOL) and Individual Spectrum Licence (ISL) to NewCo2015 Limited (“NewCo”), which authorises NewCo to use the assigned premium spectrum to operate a cellular mobile network and provide cellular mobile services in The Bahamas.

NOW, IT IS HEREBY ORDERED that BTC shall provide National Roaming services to NewCo, upon request by NewCo. BTC and NewCo shall comply with the provisions of this Order in respect of any National Roaming services provided by BTC to NewCo pursuant to this Order:

1. Definitions

1.1 In this Order the following terms shall, unless the context requires otherwise, have the following meanings:

“**Access**” means the right to use or make use of a cellular mobile network belonging to or controlled by BTC for the purpose of providing National Roaming to Customers of NewCo.

“**Access Request**” means a written request made pursuant to this Order for Access to the cellular mobile network and infrastructure of BTC.

“**BTC**” means the Bahamas Telecommunications Company Ltd., the Licensee which has been determined by URCA to have Significant Market Power in the market for Wholesale Mobile Access and Call Origination;

“**NewCo2015 Limited**” means NewCo, the Licensee who has been issued an Individual Spectrum Licence to use assigned premium spectrum to operate a cellular mobile network and provide cellular mobile services in The Bahamas.

“**Customer**” means any subscriber to a cellular mobile network and cellular mobile services in The Bahamas.

“National Roaming” means the ability of Customers of NewCo to use, or 'roam onto', the cellular mobile networks of BTC in areas of The Bahamas where NewCo has not yet built its own cellular mobile network and therefore does not provide coverage.

“National Roaming Period” means the period of up to twenty-four (24) months from the date of issuance of the licences to NewCo, or such other period as URCA may direct the Parties in writing.

“Parties” means NewCo and BTC.

“Seamless roaming” means that a Customer on NewCo’s network roams in a secure way across NewCo’s and BTC’s cellular mobile networks without noticeable interruption – i.e., while keeping connected and not disturbing ongoing sessions and conversations.

“URCA” means the Utilities Regulation and Competition Authority.

1.2 Terms defined in the Communications Act shall bear the meanings given in the Communications Act, unless expressly defined herein.

2. Scope of the National Roaming Obligation

2.1 BTC is, in accordance with this Order, under an *ex-ante* obligation to provide National Roaming on a wholesale basis to NewCo at cost-based tariffs and on impartial terms and conditions.

2.2 BTC shall not unreasonably withhold or delay National Roaming in any part of The Bahamas.

2.3 BTC may only deny or delay providing National Roaming in response to a request by NewCo where BTC can establish to URCA’s satisfaction that provision of the National Roaming service is technically or economically unfeasible in any specified area or location in The Bahamas, and having so established is expressly relieved by URCA in writing from providing the National Roaming service in such specified area or location.

2.4 The National Roaming obligation is not reciprocal and therefore NewCo is under no obligation to offer national roaming to BTC or any other cellular mobile operator, unless otherwise specifically agreed.

2.5 In their agreement for National Roaming, the Parties shall adhere to the provisions of this Order and any other applicable licence condition, provision or regulatory measure issued by URCA, save to the extent that such condition, provision or measure is agreed by URCA in writing to be inconsistent with this Order.

2.6 Neither this Order, nor the obligation to provide National Roaming relates to or affects any international roaming agreements between BTC and any person.

- 2.7 The obligation to provide National Roaming service to NewCo shall reduce over time based on the progression of the construction of NewCo's own cellular mobile network infrastructure (including co-locatable towers and sites) in The Bahamas. BTC is only required to provide National Roaming during the National Roaming Period and in areas and locations where NewCo has not constructed its own cellular mobile network infrastructure, and may discontinue the provision of such service in any geographical area or location upon notification from URCA that NewCo has successfully met its network roll-out or coverage obligations in that area.
- 2.8 The terms and conditions for National Roaming provided by BTC to NewCo shall not result in any anti-competitive outcomes, including those prescribed in the Communications Act and/or BTC or NewCo's Individual Operating Licence.
- 2.9 NewCo shall not, in those geographical areas or locations where it has network coverage using its own cellular mobile network infrastructure (including co-locatable towers and sites), use National Roaming on BTC's cellular mobile network to supplement its installed network capacity or as a safety net to compensate in the event that NewCo's own cellular mobile network cannot support its subscribers or customers. Failure by NewCo to comply with this provision may result in URCA imposing sanctions in accordance with Part XVII of the Comms Act. This provision does not restrict the use of National Roaming on a commercial basis between BTC and NewCo to provide redundancy in the event of natural disasters or planned or unplanned network outages.
- 2.10 BTC shall not modify, suspend, revoke, interfere with or otherwise impair the National Roaming services provided to NewCo pursuant to this Order without URCA's prior written approval.

3. Nature and Scope of the Service to be Provided

- 3.1 The purpose of the National Roaming service obligation is to enable NewCo's Customers, during the National Roaming Period, to originate or receive communications on BTC's cellular mobile network in The Bahamas when out of range of NewCo's own cellular mobile network, but within range of BTC's cellular mobile network.
- 3.2 The National Roaming service provided by BTC shall, to the extent technically feasible and where BTC offers these services to its own Customers, enable NewCo to offer the same services as it offers its Customers in locations where it has cellular mobile network coverage, including retail cellular mobile voice/messaging (including data services).
- 3.3 The National Roaming service provided by BTC shall, support all Bearer Services,¹¹ Teleservices and Standard GSM Supplementary Services¹² as defined currently and in any future relevant GSM standards of the European Telecommunications Standards Institute (ETSI) or 3GPP IMT-2000

¹¹Including General Packet Radio Service (GPRS)

¹²Including Number Identification (Calling Line Identification), Call Offering (Call Forwarding) and Call Restriction (Call Barring)

Technical Specifications, assuming that these are also provided to BTC's Customers. NewCo should be able to provide its own value-added services based on BTC providing access to the transmission capacity on its cellular mobile network.

- 3.4 For the avoidance of doubt, all service obligations specified in the Communications Act, regulatory measures issued by URCA and/or contained in NewCo's licences such as emergency calling, directory assistance and directory information, legal interception, malicious call tracing and quality of service shall be supported under the National Roaming obligation and shall at all times remain an obligation of NewCo.

4. National Roaming Period

- 4.1 BTC shall provide the National Roaming service to NewCo pursuant to this Order for the National Roaming Period or such other period as URCA may direct following consultation with BTC and NewCo.
- 4.2 BTC shall commence the provisioning of National Roaming on the date agreed between NewCo and BTC, which shall be no later than the date on which NewCo begins its commercial cellular mobile operations as notified by NewCo to BTC.
- 4.3 Any request for an extension of the National Roaming service beyond the National Roaming Period must be made by NewCo in writing to URCA, with a copy to BTC, no later than three (3) months before the end date of the National Roaming Period and shall provide reasons as to why an extension should be granted and the period of the extension being requested. URCA will only consider any request for an extension to the National Roaming Period in limited circumstances where network roll-out has been delayed for reasons beyond NewCo's control and subject to the same standard of reasonableness as with other regulatory measures of this nature. URCA will consider any representations received from BTC before deciding the matter. For the avoidance of doubt, this requirement applies to any request for an extension of National Roaming in any location beyond the date on which NewCo is required to establish its own network coverage at that location.

5. National Roaming Coverage

- 5.1 The National Roaming service shall provide coverage to NewCo's Customers only in areas other than those in which NewCo has built its own cellular mobile network, and where BTC has network coverage. The terms or conditions of the service shall not be unduly discriminatory against NewCo and its Customers.
- 5.2 NewCo shall supply BTC with information in a timely manner in order to facilitate network planning, testing and provision of capacity, which shall include adequate and sufficient forecasts (See Section 7 below). NewCo shall use its best endeavours to provide BTC with accurate and sufficient traffic forecasts.

5.3 National Roaming coverage provided to NewCo shall not contribute, and NewCo is prohibited by this Order from claiming that National Roaming coverage contributes, in any way towards any network coverage or roll-out targets or similar obligations specified in any licence granted to NewCo or any other document.

6. Wholesale Tariffs for National Roaming Service

6.1 BTC's wholesale National Roaming tariffs shall be cost oriented and shall not give rise to any anti-competitive conduct. In economic terms, cost oriented tariffs for National Roaming should permit a fair and suitable margin between BTC network's retail tariffs and its wholesale National Roaming tariffs.

6.2 In developing its tariffs for National Roaming services, BTC must comply with this Order, relevant economic principles of the Communications Act, URCA's Final Access and Interconnection Guidelines (ECS 14/2010), as well as all licence conditions or other regulatory measures issued by URCA that would have a bearing on the tariffs for National Roaming services.

6.3 BTC may set cost oriented tariffs for National Roaming services using any of the following techniques:

- Benchmarking analysis;
- BTC's cost accounting information for the most recent period; and/or
- retail minus costs.

6.4 "Cost oriented" tariffs for National Roaming services should permit BTC to fully recover any efficiently incurred economic costs associated with the National Roaming service.

6.5 In addition, tariffs for these services should:

- include a reasonable rate of return on capital efficiently employed; and
- be calculated using the nationwide average costs of calls, messages, and data services.

6.6 Tariffs for voice services should be expressed as a 'per minute' price and may be reasonably differentiated for peak and off-peak periods.

6.7 Tariffs for data services should be charged according to usage or "by the bit."

6.8 Tariffs for messaging services should be priced on a "per message" or "per bit" basis, though URCA will examine carefully any justification for setting such tariffs on the latter basis.

7. Requests for National Roaming and Information¹³

7.1 NewCo may, at any time during the National Roaming Period, make a written request to BTC for such information as NewCo may reasonably require to plan for and access the National Roaming services provided by BTC pursuant to this Order.

7.2 BTC shall respond to a written request from NewCo for information in a timely manner, and in any event **within five (5) business days** of receiving the request by providing to NewCo:

- i) all requested and appropriate technical information including but not limited to technical data, engineering information and network requirements; and
- ii) any other information which NewCo may request which is relevant to the provision of National Roaming services or formulation of a National Roaming agreement.

Where agreed by the Parties, or directed by URCA, such information shall be provided on a site-by-site basis.

7.3 NewCo may, at any time after the making of this Order, make a written request to BTC for National Roaming services pursuant to this Order. NewCo shall in such request provide BTC with technical and other information required to enable BTC to provide the requested services, including at a minimum:

- iii) the date upon which the National Roaming service is required;
- iv) all services which are or will be offered by NewCo to its Customers, and in respect of which National Roaming is requested;
- v) a coverage outline showing those areas where NewCo's cellular mobile network is expected to have coverage as at the date upon which National Roaming is requested;
- vi) detailed monthly traffic forecasts providing estimates of the number of customers estimated to use the National Roaming service, and the volume of National Roaming voice and data traffic expected; and,
- vii) all technical parameters of NewCo's cellular mobile network that would be required to configure the National Roaming service.

¹³ Previously Section 8 of the Draft Order

8. **Obligation to Provide National Roaming Proposals and/or Agreements¹⁴**

- 8.1 BTC shall in response to and **within fourteen (14) calendar days** of a written request from NewCo for National Roaming services, provide to NewCo a detailed and comprehensive proposal for National Roaming, and a draft agreement for National Roaming services.
- 8.2 BTC's proposal and/or draft agreement for National Roaming pursuant to this Order shall, at a minimum:
- i) Include tariffs comprising all charges associated with the National Roaming services requested by NewCo which BTC is able to provide in compliance with this Order, and details of those tariffs;
 - ii) Include all applicable non-price terms or conditions including branding, the proposed start and end dates for the National Roaming services;
 - iii) Include a process for the resolution of disputes, consistent with this Order and any relevant regulatory measures made under the Communications Act;
 - iv) Include the relevant technical and engineering requirements specified in relevant GSM Association documents. Where BTC proposes to exclude any requirement, it is the responsibility of BTC to demonstrate to URCA's satisfaction that a particular requirement is not supported by its network and infrastructure;
 - v) Include relevant customer care principles provided such principles are consistent with this Order, relevant licence conditions, the Communications Act and any other measure; and,
 - vi) Comply with the provisions of any relevant regulatory measures or obligations issued by URCA.

9. **Implementation of National Roaming Obligation**

- 9.1 The Parties shall use their best endeavours to conclude an agreement for, implement and test, National Roaming **within twenty-one (21) days** of BTC providing NewCo a proposal and draft Agreement in respect of National Roaming.
- 9.2 Any proposals for National Roaming services must be submitted to URCA and NewCo at the same time as its submission to NewCo, that is, **within fourteen (14) calendar days** of the date of BTC receiving a written roaming request from NewCo.
- 9.3 URCA will consult with the parties on any National Roaming proposal or draft agreement, and issue a final decision or determination on the submission **within the shortest timeframe feasible**.

¹⁴ Previously Section 7 of the Draft Order

- 9.4 The final determination may require BTC to make additions or changes to the draft proposal or agreement. BTC shall implement such changes **no later than seven (7) calendar days** after being instructed to do so by URCA. URCA may require BTC to amend its proposals to include the revised proposals for National Roaming.
- 9.5 The terms or conditions specified in the revised proposal if required by URCA would then provide the basis for the Parties to formalize an agreement for National Roaming.
- 9.6 All technical and commercial conditions for National Roaming must be included in a National Roaming agreement between BTC and NewCo.
- 9.7 In the event that the Parties conclude a mutually agreed commercial solution prior to URCA issuing a Final Determination on conditions for National Roaming, the Parties shall file a copy of the agreement with the URCA **within seven (7) calendar days** from signing the agreement. URCA will review the mutually agreed document for conformance with the Communications Act, and any relevant documents and regulatory measures issued by URCA, including this Order. URCA may, in exercise of its powers and functions under the Communications Act, regulatory and other measures and licences, require the Parties to make amendments to such commercial agreement to ensure conformity with the aforementioned documents.
- 9.8 For the avoidance of doubt, during the review period set out in Section 9.7 above and in the event that URCA requires amendments to be made to the National Roaming agreement, the parties are obliged to continue to implement, test and put into commercial operations the agreement.
- 9.10 NewCo shall provide BTC periodic updates on the status of NewCo's network build-out against the roll-out milestones under its ISL. At a minimum, such updates should be provided on a monthly basis, including an update no less than twenty-eight (28) calendar days prior to any coverage milestone set out in NewCo's ISL.
- 9.11 Either Party may by written request to URCA, apply for an extension of any timeline provided for in this Order, and URCA shall have the discretion to extend those timelines subject to consultation with affected Parties.

10. Disputes and Complaints

- 10.1 Disputes and complaints in relation to the National Roaming services may be submitted by either Party to URCA and will be resolved pursuant to the relevant provisions of the

Communications Act, and URCA's Alternative Dispute Resolution (ADR) Schemes (ECS 20/2014).¹⁵

- 10.2 In determining disputes or complaints, URCA may issue interim orders and regulatory and other measures as it deems necessary and appropriate in the circumstances.
- 10.3 For the avoidance of doubt, National Roaming services shall not be suspended or terminated save in accordance with this Order, or with the prior written agreement of URCA.

Part 11: Compatible Standards

- 11.1 NewCo's Customers should not be required to obtain an additional SIM-card or to register in any way with BTC to access the National Roaming service and to roam seamlessly¹⁶ between the cellular mobile networks of BTC and NewCo.
- 11.2 The National Roaming agreement between BTC and NewCo shall take into consideration the technologies employed by cellular mobile networks operated by both BTC and NewCo. BTC will not be required to offer National Roaming service in any area or location specified by URCA if and to the extent that BTC can demonstrate to URCA's satisfaction that incompatibility between the cellular mobile networks operated by BTC and NewCo render National Roaming technically infeasible in the specified areas or location.

Stephen Bereaux
Director of Electronic Communications
Utilities Regulation and Competition Authority
Dated: 22 July, 2016

¹⁵ Issued 31 December 2014 and available at <http://www.urbahamas.bs/download/010192200.pdf>

¹⁶ See Section 1 of this Order.

3 URCA's Responses to Comments Received on the Preliminary Determination

Questions 1 to 8 of the consultation document relate to URCA's rationale for the Preliminary Determination on national roaming, including its SMP assessment of the wholesale market for national roaming services in The Bahamas. In this Section, URCA summarises and responds to the substantive comments received on these questions.

3.1 Arguments in Support of National Roaming Obligation

Consultation Question 1: Do you agree with URCA's proposal that national roaming should be used to support nationwide access to mobile communications services for an interim period? If not, why?

BTC's comments

BTC was very critical of the supporting arguments for national roaming presented in Section 3.2 of the consultation paper. It was BTC's assertion that the arguments put forward by URCA do not justify the imposition of a national roaming obligation on the company. In order to reinforce its position, BTC went on to argue that URCA has not given consideration to other important factors, principally:

- the percentage of the population that would have no alternative choice of a cellular mobile provider beyond BTC;
- the possibility that even with regulated national roaming, mobile subscribers could still choose to purchase two SIM-cards as is the case in the Caribbean and elsewhere;
- the costs and benefits of national roaming given that the more remote geographic areas that would be covered by the national roaming plan are "BTC's highest-cost serving areas" and adding capacity to meet NewCo's roaming demand in these areas and locations would impose significant costs on BTC; and
- the necessity, efficiency and proportionality of the proposed national roaming obligation.

BTC then argued that *"absent any supporting market analysis or cost-benefit assessment, national roaming ... should be strictly limited in scope and duration [up to 18 months from the issuance date of NewCo's licences]and, provided on a full costs recovery basis."*¹⁷

CBL's comments

CBL fully supported the interim national roaming obligation proposed by URCA.

¹⁷See Section 2.1 of BTC's response dated May 6, 2016

URCA's response to BTC's and CBL's comments

URCA appreciates BTC's comment on the need to consider the **percentage of the population that would have no alternative choice of a cellular mobile provider** beyond BTC. In this regard, URCA notes that under its ISL,¹⁸ NewCo is obliged to complete its cellular mobile network build-out in all specified areas and locations within twenty-four (24) months from the issuance date of its licences. The ISL granted to NewCo specifies the areas and timeframes it is required to build a cellular mobile network and the required "population coverage".¹⁹ In particular, NewCo is obligated:

- To launch cellular mobile services to the Bahamian public within three (3) months from the issuance date of its licences.
- To offer geographical coverage on its own cellular mobile network and infrastructure to at least 99% and 80% of the populations of New Providence (including Paradise Island) and Grand Bahama, respectively, at the time of commercial launch.

Relative to the above, URCA considered whether in the context of NewCo's finalised build-out timetable,²⁰ it would still be necessary and proportionate to introduce a national roaming service, as was contemplated in the consultation document. Based on its analysis, URCA concludes that the proposed obligation is reasonable but that the duration for the obligation should be linked clearly to the build-out timeframe to which NewCo is committed as part of its ISL (i.e., 24 months from the issuance date of NewCo's IOL and ISL). URCA notes that the thirty-six (36) months period proposed in the consultation document was based on the generic timeframe for roll-out proposed in the RFP, without knowledge of the specific shorter time committed to by CBL/NewCo. Below, URCA sets out its reasoning, taking into consideration the opposing arguments put forward by BTC.

As previously mentioned, at commercial launch NewCo must have established a cellular mobile network (including infrastructure) that covers 99% of New Providence's population (including Paradise Island), and 80% of Grand Bahama's. In other words, NewCo must provide cellular mobile services to approximately 80% of the entire population of The Bahamas using its own cellular mobile network and infrastructure at commercial launch (See Table 1 below). This means that NewCo's cellular mobile network would be inaccessible to roughly 20% (70,292) of the entire Bahamian population (351,461), but perhaps more critically, on 17 of the 19 populated island groups in respect of which the Government has determined as a matter of policy must benefit from cellular mobile competition. Until NewCo has completed its network build-out, a significant (albeit decreasing) number of populated islands would not have an alternative choice of a cellular mobile provider beyond BTC, and the Government's objective that the benefits of competition accrue to residents in all areas and locations in the shortest possible

¹⁸<http://www.urcabahamas.bs/download/005445500.pdf>

¹⁹The term "population coverage" means that the network shall provide coverage with the relevant signal strengths in the specified percentage of places where persons habitually live and traverse on each island.

²⁰See Condition 1 of Schedule to NewCo's ISL.

time would not be met. Thus, from URCA’s standpoint the proposed obligation should endure for a period of up to twenty-four (24) months from the issuance date of NewCo's licences.

Table 1: Population Coverage by NewCo’s Cellular Mobile Network and Infrastructure²¹

Phase		Phase 1(a)	Phase 1(b)	Phase 2	Phase 3	Phase 4	Phase 5
Access to NewCo’s services	Present	Within 3 months of ISL grant	Within 6 months of ISL grant	Within 8 months of ISL grant	Within 12 months of ISL grant	Within 18 months of ISL grant	Within 24 months of ISL grant
Population with Access to NewCo	0% -	81% (281,169)	90% (316,315)	95% (333,888)	98% (344,432)	98.07% (344,678)	99% (347,946)
Population without Access to NewCo	100% (351,461)	19% (70,292)	10% (35,146)	5% (17,573)	2% (7,029)	1.93% (6,783)	1% (3,515)

Furthermore, URCA considers that analysing only the proportion of the population that does not have “home access” to NewCo’s network underestimates the potential benefits from the roaming obligation. This is because potential consumers based in New Providence and Grand Bahama may only be willing to take a NewCo cellular mobile service if they are confident it can be used on other populated islands in The Bahamas. That is, for a (potential) mobile user, the breadth of coverage that a cellular mobile operator can offer can be a determining factor when selecting a provider. As such, without national roaming, NewCo’s ability to compete with BTC may be compromised during its initial roll out even in areas where it has deployed its own network.

URCA is not disputing BTC’s second comment that under a regulated national roaming scheme, **mobile subscribers could still choose to purchase two SIM-cards** to use the operator providing the lowest charge for a particular service or superior coverage. URCA accepts that there is nothing in the Comms Act, licences, regulations or other measures that would prevent members of the public from purchasing multiple SIM-cards for the reasons previously stated. In fact, for the avoidance of doubt, URCA is not seeking to prevent multi-simming where customer choice results in consumers having multiple SIM-cards. However, for the reasons set out below, URCA does not believe that the possibility for consumers to use multiple SIM-cards would obviate the need for a roaming obligation.

First, URCA is not convinced that multiple SIM-card ownership would alleviate the concerns and negative consequences discussed on page 8 of the consultation document. Indeed, URCA considers that there are customer segments that would not find multiple SIM-card ownership an attractive proposition. In this regard, URCA specifically notes that:

- In areas and locations where BTC is the only cellular mobile service provider, multiple SIM-card usage is not likely to be an attractive proposition for customers who wish to access services on NewCo’s network.

²¹Based on Condition 1 of Schedule to NewCo's ISL and The 2010 Census of Population and Housing published by The Bahamas' Department of Statistics at <http://www.soencouragement.org/forms/CENSUS2010084903300.pdf>

- Some segment of customers could find such practice cumbersome, especially prepaid subscribers with single SIM-card handsets.
- The sale of SIM-card locked handsets²² would prevent customers from using a second SIM-card with an existing handset. This is especially the case for post-paid customers. Moreover, in order for such customers to access services on another cellular mobile network they would need to sign a second contract with BTC and incur additional upfront payment. This may pose a financial challenge for some customers.
- A customer with multiple SIM-cards who travels outside the reach of NewCo's network would run the risk of missing incoming calls, unless he or she opts for the expensive option of call forwarding, thus reducing the attractiveness of this option vis a vis the proposed National Roaming solution.

Second, URCA also accepts that it is not in a position to predict with any degree of certainty how the cellular mobile market will develop under competitive conditions and consumers' sensitivity to the price and non-price measures by which cellular mobile operators will compete against each other. This reinforces URCA's uncertainty as to whether multiple SIM-card ownership would be an effective alternative to a temporary national roaming obligation on BTC.

Lastly, URCA further notes that apart from its reference to the prevalence of multiple subscriptions in some overseas jurisdictions, BTC has not provided any evidential support for its supposition. For its part, URCA did not find any evidence that multiple SIM-card ownership has been deemed an optimal solution for the problems caused by limited network coverage and poor network reliability in any overseas jurisdictions. As to the Caribbean experience, URCA is not aware of any industry report or consumer survey suggesting that multi-simming provides an optimal solution for such issues. However, it has been suggested that effective regulation of termination rates coupled with measures to improve network coverage (e.g., passive infrastructure sharing) could alleviate the problems associated with limited network coverage and poor network reliability.²³

In the light of the above, URCA does not share BTC's view that multiple SIM-card ownership would be an effective alternative to the national roaming. URCA, therefore, maintains that a national roaming obligation is necessary during NewCo's network build-out period.

As to the argument by BTC that URCA's conclusions are flawed because ***the consultation was not supported by a cost/benefit study***, URCA reminds BTC that there is no obligation in law or otherwise for

²²SIM-card locked handset (sometimes termed network lock or subsidy lock) is a technical restriction built into mobile phones by manufacturers for use by services providers to restrict the use of these phones to specific countries and/or networks. This is contrary to a phone (retrospectively called SIM-free or unlocked) that does not impose any SIM restrictions. Some of BTC's post-paid handsets are locked to BTC's mobile network. See <https://www.btcbahamas.com/explore/products>

²³See "Telecommunications in small island states and territories of the Caribbean" Proceedings of the 4th ACORN-REDECOM Conference Brasilia, D.F., May 14-15, 2010 by Ewan Sutherland

URCA to quantify the costs and benefits of the proposed obligation.²⁴ Instead, the Comms Act appropriately requires URCA to have “*due regard to the costs and implications*” of the regulatory measure it proposes to introduce. URCA confirms that it has carefully considered those costs and implications in proposing the national roaming obligation.

While there is no obligation to quantify the costs and benefit of the proposed measure, URCA has considered whether such an exercise would be appropriate in this instance and concludes that it would not. The limited duration of the obligation would render such a resource-intensive exercise an inefficient and disproportionate use of URCA’s resources, and the preponderance of evidence suggests that the outcome would justify the obligation, particularly in light of the expressed Government policy positions.

Equally, URCA dismisses the claim that ***the necessity, efficiency and proportionality of the proposed national roaming obligation*** have not been assessed. After reviewing BTC’s comment, CBL stated that it did not share BTC’s view that URCA has failed to comply with section 5(c) of the Comms Act. As a reminder to BTC, in Sections 3.1 and 3.2 of the consultation paper, URCA set forth the context and supporting arguments for the proposed national roaming obligation. In particular, URCA explained that the proposed obligation is necessary because it enables residents throughout The Bahamas to purchase services from competing cellular mobile providers during NewCo’s build-out period and to be confident that they can use that service throughout the country. It is URCA’s further assertion that the measure under consideration is both efficient and proportionate to its purpose, and comports with all requirements laid down in relevant Bahamian law for regulation.²⁵

- As to the efficiency of the proposed obligation, URCA reiterates that in the circumstances, national roaming is the only measure that can deliver the benefits of competition to residents in all areas and locations at the earliest point possible, in accordance with the relevant policy objectives and in furtherance of effective competition in the short term. Without a national roaming obligation, NewCo’s ability to compete is likely to be reduced, as consumers would be less willing to take a service from NewCo, unless it was at a discounted price to BTC’s offering (assuming consumers face a trade-off between price and service availability and coverage). Indeed, this could cause lasting reputational harm to NewCo, even once it has completed its network roll-out, thus dampening competition over the longer term.
- Regarding the claim that the proposed obligation is disproportionate, URCA notes that without a national roaming obligation the benefits of competition would be severely restricted during NewCo’s build-out. URCA, therefore, believes that there are clear benefits to be derived from this temporary measure. URCA also considers that the proposed benefits outweigh the cost BTC is likely to incur in meeting the obligation. A national roaming obligation is the most proportionate measure of ensuring nationwide competition between BTC and NewCo during the

²⁴See section 5 of the Comms Act for the principles that underlie regulation and other measures in The Bahamas. These principles are also set out in Section 1.1 above.

²⁵See Section 5 of the Comms Act.

latter's build-out period. Moreover, the obligation is limited to the shortest amount of time necessary to generate these benefits.

URCA is confident that the **supporting analysis**, presented at Sections 3 and 4 of the consultation paper and supplemented by its responses above, provide strong support for a finding that national roaming should be used to support nationwide access to competing cellular mobile service providers for a restricted period of time. URCA stresses that BTC is misguided in its thinking that a cost/benefit assessment of the obligation is a requirement of the Comms Act. As demonstrated throughout its submissions, BTC ignores that there is no explicit requirement in relevant Bahamian law that a proposed obligation must be informed by a quantitative costs/benefit test. In terms of the recommendations put forward by BTC, URCA refers it to its final position on:

- scope and duration of the proposed obligation at questions 2 and 6 below; and
- cost recovery for national roaming at question 8 below.

URCA's Final Position – Argument in Support of National Roaming URCA's Final Determination will impose regulated national roaming for NewCo's customers on BTC's cellular mobile network to support nationwide access to cellular mobile communications services for a restricted period consistent with NewCo's roll-out obligations under its ISL. The obligation is for a limited period of up to 24 months from the issuance date of NewCo's licences. For greater certainty, BTC is required to offer roaming only in those areas and locations where BTC's cellular mobile networks is available, but NewCo's cellular mobile network has not yet been constructed and is not yet required to have been constructed as per its licence obligations. In addition, the obligation is uni-directional because NewCo is under no obligation to supply BTC with equivalent inputs or services to its cellular mobile network and infrastructure.

3.2 URCA's Review of the Market for National Roaming

3.2.1 Market Review Stage 1 - Product/Geographic Market Definitions

Consultation Question 2: Do you agree with URCA's proposed definition of the market for wholesale mobile access and origination? If not, why?

BTC's comments

BTC had no comments to offer on the specifics of URCA's SMP analysis and findings. However, BTC was not in agreement with the reference to MVNOs²⁶ in the proposed relevant market definition. According to BTC, this reference in the definition is not applicable in the current context. BTC added that in general MVNOs would normally be a "customer" rather than "supplier" of wholesale mobile access and call

²⁶Mobile Virtual Network Operators

origination (MACO) services. Accordingly, BTC asked that the textual reference to MVNOs should be removed from the proposed definition of the relevant market.

After reviewing CBL's first response on the range of retail services that the proposed obligation should support, BTC asked URCA to confirm that the obligation would not support international roaming agreements between NewCo and its foreign counterparts.

CBL's comments

CBL broadly supported URCA's proposal but asked URCA to confirm the range of retail services that the national roaming plan should support.

URCA's response to BTC's and CBL's comments

URCA appreciates and thanks the respondents for their positive feedback on its SMP analysis and findings. Concerning BTC's comments on the market definition, URCA agrees that in general MVNOs would be a "customer" rather than "supplier" of wholesale MACO²⁷ services. In any event, it was not URCA's intention to define the scope of the relevant product market to include MVNOs as suppliers of MACO services but rather to emphasise that, if in future, a cellular mobile operator offered access to a MVNO, then such services would be considered to be part of this market. URCA, however, notes that MVNO access is currently not foreseen and not relevant to the national roaming obligation, but from a market definition perspective URCA considers MVNO access to form part of the MACO market. To avoid any confusion, however, URCA will amend the market definition to reflect this thinking.

Further to the above and taking into consideration CBL's and BTC's requests for confirmation, it is URCA's final position that the identifiable wholesale market is national in scope and comprises:

- i) BTC's self-supply of mobile access and call origination to its own downstream (retail)cellular mobile business;
- ii) NewCo's self-supply of mobile access and call origination over its own cellular mobile network and infrastructure;²⁸ and
- iii) any supply of wholesale mobile access and call origination supplied to licensed third parties in The Bahamas, including the national roaming service provided to NewCo.

Broadly, the national roaming obligation should enable NewCo to offer its customers the ability to make and receive calls, send and receive SMS/MMS and access data and added features of a cellular mobile service outside its coverage area. Given this, URCA now confirms the minimum range of retail mobile services that the proposed obligation should support. In principle, the intention of the national roaming obligation is to allow NewCo to offer the same range of retail mobile services it provides via its own

²⁷Mobile Access and Call Origination

cellular mobile network, in areas outside of its network coverage. As such, URCA expects the minimum range of services to include:

- All incoming calls to NewCo’s pre-paid and post-paid mobile customers, irrespective of the origination of the call (i.e., fixed-to-mobile calls, on-net and off-net mobile-to-mobile calls, and incoming international calls).
- All outbound calls from a NewCo pre-paid or post-paid mobile customers, irrespective of the destination of the call (i.e., mobile-to-fixed calls, on-net and off-net mobile-to-mobile calls, international outgoing calls, calls to voicemail and other special services in The Bahamas, such as emergency services, directory enquires, etc.).
- All inbound and outbound mobile messaging services (SMS and MMS) from or to NewCo’s pre-paid and post-paid mobile customers, irrespective of their origination or destination.
- Access to calling features for NewCo’s pre-paid and post-paid mobile customers.
- Access to Internet services for NewCo’s pre-paid and post-paid mobile customers.

URCA clarifies that BTC is also required to terminate calls/messages to NewCo’s customers while they are roaming on BTC’s network. These termination services should be charged at the relevant mobile termination rate, as set out in BTC’s RAIIO.

URCA advises that national roaming as determined in this document does not require BTC to support international roaming agreements between NewCo and its foreign counterparts. As noted by BTC in its response to CBL, international roaming was not contemplated in the Preliminary Determination and, in any event, URCA explicitly states in Section 5.1 of the Draft Order that this temporary obligation is only intended for the use of NewCo's retail customers. From URCA’s perspective, it seems reasonable to limit the national roaming agreement to domestic services (i.e., excluding international inbound roaming services). This ensures that the overall obligation remains proportionate and focussed on benefits to Bahamian end-users. While inbound may constitute a non-trivial revenue stream to NewCo, given the short timeframe for this obligation, the exclusion of these services should have limited bearings on NewCo’s ability to compete domestically.

URCA’s Final Position – Relevant Product/Geographic Market Definitions
In its Final Determination, URCA will modify the statements in the Preliminary Determination to:

- clarify that the identifiable market includes any supply of wholesale mobile access and call origination supplied to licensed third parties in The Bahamas, including the national roaming service provided to NewCo; and
- include the minimum range of retail mobile services that the national roaming obligation should support.

²⁸Including co-locatable towers and site.

3.2.2 Market Review Stage 2 - Competition Assessment

Consultation Question 3: Do you agree with URCA's preliminary finding that BTC has SMP in the wholesale market URCA proposes to define? If not, why?

BTC's comments

In view of its submission on question 2, BTC did not provide any comment on this question.

CBL's comments

CBL fully supported URCA's finding that BTC has SMP in the contemplated relevant market.

URCA's response to BTC's and CBL's comments

URCA appreciates the responses received on this question.

URCA's Final Position – Competition Assessment

Given its arguments in Section 4.2 of the consultation and the comments received on this question, URCA now affirms its preliminary finding that BTC holds SMP in the wholesale MACO services market in The Bahamas.

3.2.3 Market Review Stage 3 - Remedy Design

Consultation Question 4: Do you agree with URCA's preliminary finding that excessive pricing and/or refusal to supply are the main market failures in the wholesale market it proposes to define? If not, why?

BTC's comments

Given its submission on question 2, BTC did not provide any comment on this question.

CBL's comments

CBL was in agreement with URCA's initial finding that the key market failures or anti-competitive concerns that are likely to arise in the identifiable market are excessive pricing and/or refusal to supply.

URCA's response to BTC's and CBL's comments

URCA appreciates the comments received on this question.

URCA's Final Position – Market Failures Identified

Following its review of the arguments in Section 4.3 of the consultation and the comments received on this question, URCA now affirms its preliminary findings that excessive pricing and/or refusal to supply are the main anti-competitive concerns that are likely to arise in the identifiable market.

Consultation Question 5: Do you agree with URCA’s preliminary finding that the wholesale market it proposes to define is susceptible to *ex-ante* regulation? If not, why?

BTC’s comments

Further to its submission on question 2, BTC did not provide any comment on this question.

CBL’s comments

CBL was in total agreement with URCA’s preliminary finding that *ex-ante* regulation of the identifiable market is warranted.

URCA’s response to BTC’s and CBL’s comments

URCA appreciates the comments received on this question.

URCA's Final Position – Susceptibility of Market to Ex-Ante Regulation

Given the arguments presented in Section 4.3 of the consultation and the comments received on this question, URCA now affirms its preliminary finding that *ex-ante* regulation of the identifiable market is warranted.

Consultation Question 6: Do you disagree with URCA’s proposed scope of the national roaming obligation to be provided by BTC? If so, why?

BTC’s comments

BTC remained critical of the proposed 36-month timeframe for NewCo's mobile build-out and proposed an 18-month period instead. BTC repeated an earlier comment that after NewCo’s licence is finalized and granted, NewCo should be in a position to provide network coverage to approximately 95% of the entire population of The Bahamas and at that point the national roaming obligation could be discontinued.

It was BTC's view that the Preliminary Determination and Draft Order should include:

- sections of NewCo’s ISL (i.e., finalized network roll-out targets and timeframes); and
- a requirement for BTC to receive timely updates on the progress and status of NewCo’s mobile build-out against the roll-out milestones under its ISL.

BTC went on to claim that URCA has failed to explain why the national roaming obligation “...*must cover all available technologies, where available.*” Although BTC was not opposed to a technologically-neutral definition, it opposed the inclusion of access to LTE networks in the obligation. BTC thus proposed to limit the scope of the proposed obligation to “basic” mobile service capabilities. That is, the services to be offered under a national roaming agreement would enable a NewCo roaming subscriber to make and receive calls, send and receive messages, and access "basic" Internet services only. BTC opined that there is no justifiable reason why high speed LTE data access should be part of the obligation, especially if it would be required to upgrade its LTE network capacity to handle temporary demand for the service.

CBL’s comments

In its first response, CBL cross-referenced its comments on questions 9 to 17 (i.e., Sections 2 to 10 of the Draft Order). Upon reviewing BTC’s response, CBL reiterated that the proposed obligation should be available thirty-six (36) months from the date of NewCo’s commercial launch and BTC has provided the service in all specified areas and locations requested by NewCo, or such other longer period as determined by URCA.

URCA’s response to BTC’s and CBL’s comments

Further to its review of CBL’s comments on questions 9 to 17, URCA concludes that it is not necessary to repeat its assessment of these comments here. URCA will ensure that any substantive change to the Draft Order resulting from these comments is made to the Preliminary Determination, as appropriate and necessary.

Concerning ***the basis for NewCo’s 36 month roll-out timeline***, URCA wishes to remind BTC that the proposed roll-out obligations and timeframe for these are outside the scope of this consultation process, but instead were determined by the Government in preparing the IOL/ISL tender process.

URCA notes the differing views of the respondents on the ***duration of the proposed national roaming obligation***. URCA does not consider it would be in the public interest to discontinue the proposed obligation after 18 months. This is because, NewCo is not expected to have completed its cellular mobile network build-out to all island groups within 18 months from the issuance date of its licences (See question 1). Similarly, URCA finds that the thirty-six (36) month timeframe contemplated by CBL is unnecessary and excessive. Rather, URCA proposes that the duration for this obligation should be linked clearly to the twenty-four (24) month roll-out timeframe to which NewCo has committed in its ISL. Indeed, URCA notes that CBL made no attempt in its submissions to justify its proposal to extend the national roaming obligation for a further twelve (12) months beyond this period. Because NewCo is expected to have completed its network build-out within twenty-four (24) months from the issuance date of its licences, URCA considers that the obligation imposed on BTC should end concurrently with NewCo’s roll-out obligations, that is no more than twenty-four (24) months from the issuance date of NewCo’s licences. However, should NewCo’s network roll-out be delayed through matters beyond its control, which may include force majeure or the actions of other parties, NewCo will be permitted to

apply to URCA with notice to BTC for the obligation to be continued for a further additional period.²⁹ URCA will consult with BTC prior to making any decision on such an application.

Regarding the reference to "**...all available technologies, where available**" in the definition, URCA notes that this was addressed in Section 4.1 (p.12) of the consultation document. Nevertheless, URCA reiterates here that a technologically neutral definition is:

- Appropriate because retail customers are generally not aware of the network technology used to deliver their services, while the same underlying infrastructure is typically used to deliver all mobile services.
- Consistent with the approach taken by other regulators when defining the boundaries of the product market for national roaming.
- Ensures that retail customers receive the same service and experience regardless of whether they are on NewCo's own network or roaming on BTC's network.

URCA struggles to understand the position taken by BTC on **LTE data access**. URCA is not aware of any technical constraints that would make it infeasible for BTC to provide LTE data access to a NewCo roaming subscriber. This is because BTC currently provides LTE data services to its own retail customers and visitors to The Bahamas roaming on its network. BTC states that it will incur additional costs by having to add LTE capacity to its network to cope with the demand from national roamers. If BTC does incur any such costs and these can be directly attributed to the national roaming obligation, then it will be able to recover those costs.

Section 2.3 of the Draft Order specifies the circumstances under which BTC would be relieved of the obligation to provide national roaming in specified areas. However, URCA considers that none of the specified conditions currently apply in The Bahamas. Indeed, URCA notes an inconsistency in BTC's arguments – on the one hand asserting that national roaming will not be necessary because of the very limited population who would benefit from this, and on the other hand, predicting a large volume of national roaming traffic.

URCA further notes the statements in CBL's response to BTC that:

- LTE is not a premium service because customers in The Bahamas do not pay a premium price to access the product.
- Customers should receive the same service and experience regardless of whether they are on NewCo's or roaming on BTC's network.
- Limiting national roaming to "basic services" would provide BTC with an unnecessary competitive advantage.

²⁹See Section 4 of the Order

In view of the arguments set out above, URCA does not consider it appropriate to exclude LTE data access from the national roaming obligation.

URCA now turns its attention to BTC's proposed ***additions to the Preliminary Determination and Draft Order***. Further to its review of BTC's response, CBL was opposed to the inclusion of sections of NewCo's ISL in either documents. From URCA's perspective NewCo's ISL is a public document and accessible to BTC.³⁰ As such, URCA considers that CBL's request would be an unnecessary addition to the Preliminary Determination and/or the Draft Order.

URCA, however, is not averse to the inclusion of a requirement in the Draft Order that would ensure BTC receives updates on the status of NewCo's cellular mobile build-out against the roll-out milestones under its ISL. URCA appreciates the arguments put forward by BTC in support of this request. URCA particularly notes that, in its response to BTC, CBL did not comment either way on this proposal. URCA, however, considers this inclusion to be a positive addition to the national roaming framework and proposes to amend the Draft Order accordingly.

URCA's Final Position – Scope of the National Roaming Obligation

It is URCA's Final Determination:

- that national roaming obligation shall endure for a period of up to 24 months from the issuance date of NewCo's licences, with any possible extensions to be considered only in limited circumstances where network roll-out has been delayed for reasons beyond NewCo's control;
- to define the relevant market "*on a technology neutral basis and thus includes any network technology (e.g., GSM, HSPA, and LTE), which is currently or may be in the future, be deployed by licensees for the purpose of operating a cellular mobile network and providing cellular mobile services in The Bahamas*";
- to retain LTE data access in the range of retail mobile services that the obligation needs to support; and
- impose a requirement under Section 9 of the Draft Order for NewCo to provide BTC periodic updates on the status of NewCo's network build-out against the roll-out milestones under its ISL.

Consultation Question 7: Do you agree with URCA's proposal on the information to be provided by BTC? If not, why?

BTC's comments

BTC was concerned that the timeframe for submitting details of its standard terms and conditions is unrealistic. According to BTC, the process for determining appropriate prices and other terms will be a complex and challenging undertaking. BTC indicated it was "*...not aware of any jurisdiction where so*

³⁰<http://www.urbahamas.bs/download/005434200.pdf> and <http://www.urbahamas.bs/download/005445500.pdf>

short a period has been set to determine the details of such complex inter-carrier arrangement.” BTC estimated that a period of up to ninety (90) days of the date of this Final Determination would be a more appropriate and realistic timeline for the submission of a proposed agreement containing prices and other measures.

CBL’s comments

CBL cross-referenced its comments on questions 9 to 13 (i.e., Sections 2 to 6 of the Draft Order). Upon its review of BTC’s response, CBL was opposed to the timeline proposed by BTC. CBL noted that in addition to precedents from other markets, BTC as a member of the GSM Association has access to standardised international roaming agreements that can be quickly modified in order to provide national roaming services.³¹

URCA’s response to BTC’s and CBL’s comments

Further to its review of CBL’s comments on questions 9 to 13, URCA concludes it is not necessary to repeat its assessment of these comments here. However, URCA will ensure that any substantive change to the Draft Order resulting from these comments is made to the Preliminary Determination, as appropriate and necessary.

URCA realises that implementation of national roaming would be a new undertaking for the parties involved and BTC would need a reasonable period of time to properly develop the details of a national roaming agreement. At the same time, URCA considers that a 90 day timeline would delay implementation of the obligation beyond NewCo’s pre-commercial launch period. While agreeing with the point raised by CBL, URCA was of the view that the proposed agreement would also need to reflect local circumstances. In order to balance the competing views of the parties, URCA will require BTC to provide URCA and NewCo with a proposed roaming agreement containing price and other terms **within fourteen (14) calendar days** of receiving a written request for national roaming services. In coming to this conclusion, URCA has also taken into account the Parties' submissions on the various timeframes set out in Section 9 (or question 16) of the Draft Order.

URCA's Final Position – Information to be provided by BTC

It is URCA's final determination to modify the Preliminary Determination and Draft Order to require BTC to submit to URCA and NewCo a proposed roaming agreement containing prices and other terms **within 14 calendar days** of receiving a written request for national roaming services.

³¹See CBL’s Second Response to the consultation dated 24 June 2016

Consultation Question 8: Do you agree with URCA’s preliminary view that wholesale tariffs for national roaming should be set on the principle of cost orientation of prices? If not, why?

BTC’s comments

Key concerns raised by BTC in its original submissions on the question include:

i) Principles for setting cost-based roaming rates

BTC agrees that national roaming rates should be set on a **cost-oriented** basis. BTC explained that if “applied properly”, this principle should ensure that such tariffs permit the providing operator (BTC) to fully recover the actual set-up costs and recurring costs (including a rate of return on capital) associated with the service. However, BTC was concerned that other elements of URCA's proposals on cost recovery for the service contradict the principle of “cost orientation” of prices. In particular, the requirements that roaming rates reflect:

- efficiently incurred cost; and
- the national average cost of providing the service (i.e. network-wide average costs).

On the first point, BTC argued that it was not obliged to subsidize NewCo’s mobile build-out, and warned that any “**efficiency adjustments**” to its cost accounting results would not permit BTC to set national roaming rates on a full cost recovery basis.

BTC was equally critical of URCA’s proposal that tariffs for national roaming should reflect the **national average cost** (or **network-wide average cost**) of providing the service. Arguing that a network-wide average cost approach is contrary to the principle of "cost orientation" of prices, denies customers the benefits of competition, and delays the development of a second cellular mobile network nationwide. BTC then suggested that the textual references to a “national averaging” requirement should be deleted and/or revised to indicate that:

- the average cost of providing the service should be calculated over those areas where the national roaming service is provided only; and
- national roaming rates should be adjusted periodically to reflect the decreasing area over which the service would be provided to NewCo.

ii) Possible options for setting cost oriented national roaming rates

BTC cast doubt upon **benchmarking analysis** as a basis for setting wholesale rates for national roaming services. BTC stated that the confidential nature of national roaming agreements, the absence of suitable comparator countries to The Bahamas, among other things, suggest that this technique might not be a practical and feasible way forward.

It was BTC's view that wholesale rates may be set using an adjusted retail pricing methodology and further advised that it was exploring the feasibility of calculating national roaming rates using:

- outputs from its 2014/15 cost accounting model, and
- an adjusted retail pricing methodology.

BTC went on to note that its **cost accounting model** was not designed to set cost-oriented rates for the service in question. In view of this, BTC proposes to adjust its 2014/15 cost accounting results to take account of the start-up costs associated with the provision of national roaming, and other local factors (e.g., market share losses).

BTC was of the view that an **adjusted retail pricing methodology** (sometimes termed "retail minus costs") could potentially serve as a practical and feasible way forward. BTC advised that in the actual implementation of this regime, BTC would adjust the effective average retail prices for calls, messaging and data to take account of retail service costs; geographic cost differences; market share loss impacts, and other local factors.

iii) Implementation of CPP vs RPP for certain call types

BTC commented that roaming rates would be impacted by the retail pricing policies implemented for fixed-to-mobile and mobile-to-mobile (off-net) calling, however determined.

iv) Other proposals:

As part of its consultation responses, BTC also made the following proposals:

- Charging for messaging services should be on a "per message" basis and include a "per bit" data component.
- National roaming rates should include a fixed component that is payable on a monthly or quarterly basis, independent of the actual national roaming traffic during that period (i.e., a minimum guaranteed payment).

CBL's comments

CBL, in its first response, cross-referenced its comments on question 12 (i.e., Section 5 of the Draft Order). That is, CBL was unable to comment on the principles or methodology to be used to determine cost-oriented national roaming tariffs, because:

"NewCo is in the process of obtaining its telecommunications licence and is not yet a legally constituted entity and as such therefore does not have a Board of Directors in place to analyse the pros and cons for its competitive position and make the decision in this regard;

CBL is unclear whether a CPP or RPP regime will be implemented;

BTC's historic separated accounts have not been made publically available in order to allow interested parties to perform its own estimations and calculations of cost based National Roaming tariffs."

CBL warned that wholesale prices, that appear sensible on the day a national roaming agreement is signed, may be out of line within a few weeks or months due to rapidly changing retail market. That is, CBL appears to be suggesting that a review of the rates would be in order once NewCo is in operation and experience is gained with the tariff.

Upon reviewing BTC's first response, CBL raised a number of objections to BTC's initial comments on question 8, stating that:

- In general, wholesale rates should be set on a pure long run incremental cost (LRIC) basis and emphasised that this was the position taken by BTC's counterparts elsewhere (e.g., LIME Jamaica) in relation to Mobile Termination Rates (MTR).
- Under a pure LRIC approach:
 - only costs that are incremental to a service are attributed to that service;
 - cost would be reflective of fully efficient operations; and
 - would not take account the adjustments (e.g., market share losses) identified by BTC in its first response.
- BTC's proposal that wholesale rates for the service "*should be calculated over those areas where the national roaming service is provided*" is contrary to BTC's own pricing policies and lacks international precedents.

It was CBL's recommendation that in the absence of pure LRIC coupled with the limited duration of proposed obligation, URCA should set rates utilising the results of a recent European Commission (EC) study on wholesale roaming services in the European Union (EU).

URCA's response to BTC's and CBL's comments

URCA appreciates the extensive feedback received from both respondents on this question.

In Section 4.3.4 of the consultation, URCA stated that roaming charges should be based on two key principles: namely that they should be reflective of: (i) efficiently incurred costs; and (ii) national average cost of providing the service (i.e., network-wide average costs).³² URCA then put forward two possible options for setting cost-oriented national roaming rates: (i) using BTC's most recent cost accounting results (inclusive of any adjustments to take account of any additional cost reasonably incurred in the provision of the roaming service and of a material nature); and (ii) benchmarking analysis.

³²In this case the wholesale rates for calls, messaging, and data are calculated to reflect the average cost of providing the service over all areas of The Bahamas.

On the comments put forward by both respondents, URCA responds as follows:

(i) Implementation of RPP vs CPP

URCA accepts the need for certainty in respect of the retail pricing regime that would be implemented for fixed-to-mobile and mobile-to-mobile calling. URCA now advises that there will be no ex-ante regulatory intervention by URCA to determine the retail pricing regime adopted by licensees. As such, URCA anticipates that there will be no change to the current retail pricing regime adopted by BTC:

- a Mobile Party Pays (MPP) regime³³ will continue to apply to fixed-to-mobile calling; and
- BTC will levy a retail charge on its mobile customers for calling and sending messages to subscribers on NewCo's network.

Given that no other licensee has SMP in the relevant retail fixed call or mobile service markets, these licensees can determine their preferred retail pricing regime (taking into account the need for consistency with any underlying interconnection charging principles).

It is important to note that there is no direct link between the retail pricing regime and the payment for national roaming services. Irrespective of the pricing regime on the retail level, BTC will still have to charge NewCo for any calls a NewCo customer receives or makes while roaming on BTC's network. URCA recognises that under certain circumstances, the retail pricing regime may impact the way the national roaming charges are derived. This should not, however, have any bearing on the appropriate level of the cost-oriented charges for national roaming.

(ii) Impact of changing retail markets on wholesale charges

Upon reading CBL's response, BTC was of the view that a review of the tariff rates would be appropriate if the costs of providing the service are found to be higher than anticipated. In view of the respondents' comments, URCA advises that it would not object to the inclusion of a requirement within a national roaming agreement for periodic review of tariff:

- where the providing operator is able to demonstrate that the costs of providing the service are higher than was originally anticipated; and
- experience dictates that a review is warranted to address anti-competitive concerns.

(iii) Principles for setting cost-based roaming rates

URCA acknowledges BTC's proposals that national roaming rates should:

- permit the full recovery of actual set-up costs and recurring costs (including a rate of return on capital) associated with the national roaming service;
- not be subject to an "efficiency adjustment"; and
- reflective of "*the national average cost of providing the service ... only over those areas where the national roaming service is provided...*".

³³Sometimes termed Receiving Party Pays (RPP)

Equally, URCA acknowledges the objections raised by CBL to each of the above proposals.

URCA advises that **cost orientation of rates** is an important economic concept in URCA's regulation of operators with SMP. In fact, this is a requirement of BTC's licence, the Comms Act and URCA's Final Access and Interconnection Guidelines (ECS 14/2010).³⁴ Among other things, in exercising its rate-making functions under the Comms Act, URCA must adhere to the requirement that any obligations relating to cost recovery and price controls shall take into account the investment made by the providing operator.

Linked to the concept of cost orientation of rates is the principle of **efficiently incurred costs**. This principle is also an established concept in economic regulation of operators with SMP in The Bahamas. In this respect, URCA reminds BTC that BTC's statements on efficiency adjustments are out of step with relevant Bahamian law. This is particularly the case with regards to section 40(3)(b) of the Comms Act that states that obligations relating to cost recovery and price controls must reflect efficiently incurred costs. URCA further reminds BTC that this provision holds regardless of the methodology used to set national roaming rates. URCA therefore is specifically obliged to investigate whether roaming rates reflect efficiently incurred costs as this is the basis for calculating BTC's rate of return on capital efficiently employed. Furthermore, URCA does not consider that allowing the recovery of only efficiently incurred costs would amount to a subsidy to NewCo.

URCA notes BTC's strong objection to URCA's support for a **network-wide average costs** approach, stating that this would violate other pricing principles or considerations listed by URCA in the consultation document. URCA equally notes the alternate approach outlined in BTC's submission. URCA disagrees with BTC that national roaming rates should be set on this basis. URCA believes that such an approach would be worthy of consideration if BTC were to charge differential retail rates for mobile services based on the service area. However, this is currently not the case.

Furthermore, URCA does not believe that a network-wide average cost approach, as was contemplated in the consultation document, would encourage NewCo to slow down its network roll-out or not to comply with its obligations generally. URCA also notes that apart from the financial penalties of not meeting the roll-out milestones under the ISL, the national roaming obligation is also time bound. URCA is further of the view that a network-wide average cost approach does not violate any of the key economic principles of the Comms Act, BTC's licence, regulation or other measures.

In conclusion, URCA does not believe BTC's proposal is appropriate under the given circumstances due to the following:

- BTC does not differentiate its retail prices on a geographic basis as rightly pointed out by CBL.

³⁴<http://www.urcabahamas.bs/download/024581000.pdf>

- This obligation is a time-bound remedy linked to NewCo’s roll-out obligations therefore this should not impact its incentives to roll out.
- It would take BTC quite a while to develop these cost figures, which would delay implementation of a short obligation.

(iv) Possible options for setting “cost-oriented” roaming rates

URCA notes the differing views of respondents on the methodology that should be used to set roaming rates. URCA accepts that under ideal conditions wholesale rates would be set using an **LRIC-based approach** (or bottom-up cost models). However, as CBL acknowledged in its response to BTC, LRIC-based charging is not a feasible option at this time. URCA, however, acknowledges that it would still be feasible to set cost-oriented roaming rates using any of the listed options:³⁵

- benchmarking analysis;
- top-down cost model (such as BTC's FAC-Fully Allocated Costing model); and/or
- retail minus costs.

Below, URCA sets out its final position on each of the above techniques, taking into account BTC's and CBL's comments. In doing so, however, URCA reminds respondents that BTC will be required to propose appropriate rates in its draft National Roaming proposal. As such, in this document URCA does not set out a final position on how rates must be determined but rather establishes the clear principles it will apply in judging the reasonableness of the proposed charges. In this regard, BTC shall determine its proposed “cost oriented” tariffs for all national roaming services and submit these to URCA for review and approval. As part of its review, URCA will seek to ensure that BTC’s tariffs are compliant with this Determination and any other obligations imposed on BTC.

URCA realises that **benchmarking analysis** would not be feasible where the information required is unavailable. But apart from direct setting of rates, benchmarks from other jurisdictions where charges are cost-oriented are used frequently as a sense check on proposed charges. URCA further accepts that where BTC proposes to use benchmarking to set rates, adjustments may need to be made for differences among jurisdictions. Although recognising the range of concerns identified by BTC, URCA would not rule out the use of benchmarking to directly set rates or as a sense check of proposed charges.

URCA notes CBL's recommendation that URCA should set roaming rates utilising the outputs of a recent EC Report on wholesale roaming services in the EU. URCA, however, reiterates that the setting of rates is beyond the remit of this document, and hence it is unable to consider CBL's proposal at this time.

With regards to using a **top-down cost model** to set charges, URCA accepts that BTC's cost accounting model was never designed to set cost-based national roaming rates. As such, it may be necessary for

³⁵<http://www.ictregulationtoolkit.org/2.4.1>

BTC, if it uses this model to propose charges, to make certain adjustments in order to reflect more appropriately the efficient cost of providing the roaming service. However, URCA reminds BTC that it should only make adjustments that are clearly justified and support the derivation of cost-oriented charges. URCA is currently not in a position to confirm the specifics of the adjustments that BTC may be allowed to make at this time and without these details, URCA is not in a position to evaluate the reasonableness, relevance and materiality of BTC's proposals. However, the responsibility will rest with BTC to demonstrate that national roaming charges are appropriately derived.

Concerning the stated need to take account of market share losses in BTC's cost accounting data, whilst BTC may lose some market share during the period of the national roaming obligation, due to an expected underlying growth in overall demand for mobile services, the net impact on the total traffic conveyed over BTC's network (which is the relevant cost driver) is unclear to URCA. There is further a question as to how much market share BTC will lose over the limited period of the national roaming obligation being in place.

Finally, URCA is, in principle, not averse to BTC applying a **retail minus costs approach**, as long as such an approach yields reasonable, cost-oriented national roaming charges. Under this regime, the wholesale price paid by NewCo would be equal to BTC's effective average retail revenue for calls, SMS and data, less the 'net' avoidable costs efficiently incurred by BTC to supply roaming services to NewCo. The main elements of 'net' avoidable costs are (i) 'costs saved' and (ii) costs incurred in providing roaming services to NewCo. Costs incurred include the economic costs associated with any additional capacity reasonably incurred by the providing operator (in this case BTC) in supplying the service. 'Costs saved' refer to the costs BTC avoids by not serving a retail customer. The 'net' avoidable cost (i.e., costs saved less additional costs incurred) is calculated as a percentage of the average effective retail revenue. This percentage reduction is then applied to the initial retail price and any subsequent changes in retail price. As such, by fixing the required margin between retail and wholesale charges, this approach allows the national roaming rate to adjust automatically to any developments at the retail level. URCA observes that there is nothing in the Comms Act, the ECS Policy, BTC's licences, regulation and other measures³⁶ that prevent BTC from proposing rates derived on a "retail minus" basis. URCA believes that the limited duration of the proposed obligation and the need for an expedited roaming agreement could favour this approach, so long as retail prices are reasonably cost-reflective.

URCA is not in a position to comment on the appropriate retail margin that should be applied, were BTC to apply a retail minus approach. However, when reviewing any retail minus based national roaming charges proposed by BTC, URCA will assess whether the proposed charges can be considered cost-reflective. In particular, a retail minus regime is only appropriate where the underlying retail prices are cost reflective. This is to avoid reflecting prevailing retail margins in the national roaming charges, resulting in the latter not being reflective of the underlying efficient cost of providing these services. As

³⁶In ECS 14/2010 it was stated that specific products may be provided or required on a 'retail minus' basis.

such, BTC would have to, amongst others, demonstrate as part of its national roaming price proposal that the relevant retail prices used in its retail minus approach are cost-reflective, or deduct an additional margin to reflect the current returns it earns on its mobile retail services. URCA will then, as part of its review, consider the cost orientation of the resulting national roaming charges. In doing so, URCA considers that BTC's cost-based mobile termination rate is likely to form a reasonable benchmark for national roaming (i.e., call origination) charges, with any national roaming charges above the termination rates requiring sound justification by BTC.

In conclusion, regardless of the methodology used to set rates, URCA in assessing BTC's rate proposal, will examine carefully the justification for any adjustments proposed and their likely effect. In the final analysis, the burden of proof rests with BTC to demonstrate that wholesale rates are pro-competitive, reflective of efficiently incurred costs and appropriately derived.

(v) Charging for messaging services

URCA agrees that messaging services should be priced on a "per message" basis. While URCA would not rule out a "per bit" data component, it would examine carefully the justification for such charges and their likely impacts.

(vi) Recurring minimum guaranteed payment

URCA notes BTC's supporting arguments for a recurring minimum guaranteed payment each month/quarter, independent of NewCo's actual usage. URCA sees no cost justification for any minimum guaranteed payment each month/quarter. URCA understands that in long-term national roaming agreements, such payments are sometimes motivated by a competitive advantage gained by the roaming party and/or to avoid any geographically de-averaged charges. However, this does not hold for the time-bound national roaming obligation in The Bahamas.

Further, URCA notes the operators' discussion on the need for penalties in case NewCo diverges from its forecasted roaming traffic or, as suggested by BTC, a minimum guaranteed payment to remove the need for such penalties. URCA generally sees no need for such penalties, unless there are clear cost justifications for them (i.e., in the case of high, ongoing fixed costs incurred by BTC in providing national roaming. Any one off, set-up costs, where applicable, could instead be recovered from a one-off charge to NewCo). URCA notes that this is further in keeping with the position taken with respect to the BTC URCA-approved RAIO, where no forecasting-related penalties are included.

However, if proposed by BTC, URCA would examine carefully the justification for such charges, their level and likely impact.

BTC shall determine its proposed "cost oriented" tariffs for all national roaming services and submit these to URCA for review and approval. As part of its review, URCA will seek to ensure that BTC's tariffs are compliant with this Determination and any other obligations imposed on BTC.

URCA's Final Position – Wholesale Price Control

It is URCA's final determination to amend the Preliminary determination as follows:

BTC may set cost-oriented roaming rates using any of the following techniques:

- Benchmarking analysis;
- BTC's cost accounting information for the most recent period; and/or
- retail minus costs.

“Cost-oriented” rates for national roaming service should permit BTC to fully recover any efficiently incurred economic costs associated with the national roaming service.

Termination services relating to national roaming should be charged at the relevant mobile termination rates, as set out in BTC's RAIO.

National roaming rates should:

- include a reasonable rate of return on capital efficiently employed; and
- be calculated using the nationwide average costs of calls, messages, and data services.

Charging for messaging services should be priced on a “per message” basis. URCA would not necessarily rule out a “per bit” data component but would carefully examine the justification for such charges and their likely impacts.

4 URCA's Responses to Comments Received on the Draft Order

Questions 9 to 18 of the consultation document focused on the Draft Order. URCA now summarises and responds to the comments received on these questions.

4.1 Scope of the National Roaming Obligation

Consultation Question 9: Do you agree with URCA's proposed general obligations in the proposed Order for BTC to provide national roaming? If not, why?

CBL's comments

CBL outlined six areas where it seeks clarification as follows:

“BTC should not be able to deny national roaming services in any specified area or location in The Bahamas if it provides international roaming services in the specified area or location;

BTC should be explicitly required to provide national roaming services on each of its currently deployed networks (e.g., 2G, 3G, 3.5G, HSPA, LTE and CDMA) and any future networks;

BTC should provide national roaming on non-discriminatory terms [Section 2.1];

prior to URCA making the determination set out the relevant sections it should consult with NewCo[Sections 2.3 and 2.7];

in Section 2.7 the phrase "has not constructed" should be replaced with "does not have networks coverage using its own cellular mobile network infrastructure (including co-locatable towers and site)" in order to be consistent with Section 2.9; and

URCA should be required to consult with NewCo prior to any prior written approval being given to BTC to modify, suspend, revoke, interfere with or otherwise impair the national roaming services provided to NewCo [Section 2.10]."

BTC's comments

BTC repeated an earlier request (question 6) for the inclusion of sections of NewCo's ISL in the Draft Order. Upon review of CBL's response, BTC commented that three (3) of the six (6) clarification items put forward by CBL are unnecessary clarifications (or additions) to Section 2 of the Draft Order and should be rejected.

URCA's response to BTC's and CBL's comments

In line with its final determination under question 6 above, URCA will not include sections of NewCo's ISL in Section 2 of the Draft Order.

On the six (6) clarification points raised by CBL, URCA concludes as follows:

- As to the first item, URCA agrees with BTC that this is an unnecessary clarification. First, the proposed obligation is not meant to support international roaming services. Furthermore, as BTC pointed out in its second response, under the proposed obligation BTC is only obliged to provide national roaming in areas and locations where it has a cellular mobile network and infrastructure. URCA, therefore, is not proposing to amend the current text in Section 2 of the Draft as proposed by CBL.
- Regarding CBL's second clarification item, URCA shares BTC's view that this is an unnecessary clarification though for a different reason. As noted earlier (question 6), URCA was not in agreement with BTC that the proposed obligation should only support "basic" mobile services and services provided over BTC's LTE data network should be excluded. At the same time, URCA is satisfied that the current text is in line with a technologically neutral definition of the relevant wholesale market. As such, URCA expects BTC to offer access to all technologies (including GSM, HSPA and LTE) that it offers to its own retail customers in those areas, assuming that NewCo offers the same on its own cellular mobile network. Thus, no changes are proposed to the current text in the Section.
- In terms of CBL's third clarification item, BTC again objected, noting that the proposal is unnecessary and redundant. URCA agrees with BTC. Having regard to the statutory prohibition

against undue discrimination and BTC's licence condition, URCA sees no need to change the current text in Section 2.1.

- URCA notes that BTC was not opposed to CBL's clarification in respect of Sections 2.3, 2.7 and 2.10 of the Draft Order. URCA, however, believes the respondents' proposals are unnecessary and redundant. This is because URCA has a statutory responsibility under relevant Bahamian law to invite comments from licensees and other interested parties before adopting any regulatory measure that is of public significance. As such, no changes have been proposed to the current text of Sections 2.3, 2.7 and 2.10.
- URCA agrees with the respondents on the need to align the phraseology in Section 2.7 with Section 2.9. It was BTC's position that the phrase "*co-locatable towers and site*" in Section 2.9 is inconsistent with the consultation document generally. URCA, however, does not share BTC's view and will align Section 2.7 with Section 2.9 as suggested by CBL.

URCA's Final Position – Section 2 of the Draft Order

In its Final Determination URCA will align the phraseology in Section 2.7 with Section 2.9 of the Draft Order.

4.2 Nature and Scope of the Service to be Provided

Consultation Question 10: Do you agree with the proposed nature and scope of the national roaming services? If not, why?

CBL's comments

CBL recommended that Section 3.3 of the Draft Order should be clarified by ensuring teleservices, supplementary services and bearer services are those defined currently and in any future relevant GSM standards of the European Telecommunications Standards Institute (ETSI) or 3GPP IMT-2000 Technical Specifications.

BTC's comments

After reviewing CBL's response, BTC was not in agreement with CBL's proposal, arguing that it is not reasonable to require BTC to support all current and future technology standards for an interim obligation.³⁷

³⁷See Section 3.2 of BTC's second Round Submission dated June 27, 2016

URCA's response to BTC's and CBL's comments

URCA notes the opposing views of the parties on this issue. URCA is not aware of any technical constraints that would make it infeasible for BTC to support current and future technology standards. URCA considers that CBL's request is not unreasonable. URCA, therefore, proposes to amend the current text of Section 3.3 of the Draft Order to include a requirement for BTC to support current and future technology standards, assuming these are also provided to BTC's Customers. For the avoidance of doubt, this determination does not require BTC to invest in future technology standards solely for the purpose of meeting NewCo's roaming request.

URCA's Final Position – Section 3 of the Draft Order

URCA has determined that BTC should support teleservices, supplementary services and bearer services as defined currently and in any future relevant GSM standards of the European Telecommunications Standards Institute (ETSI) or 3GPP IMT-2000 Technical Specifications, assuming these are also provided to BTC's Customers. URCA will amend Section 3.3 of the Draft Order to reflect this decision. For the avoidance of doubt, it is not URCA's final determination that BTC should invest in future technology standards solely for the purpose of meeting NewCo's roaming request.

4.3 Duration of National Roaming Obligation

Consultation Question 11: Do you agree with URCA's proposed obligations regarding the duration of the national roaming obligation? If not, why?

CBL's comments

CBL asked for clarification from URCA that the period referred to in Section 4.1 of the Draft Order shall not be shorter than the national roaming period and reiterated that the national roaming period should end thirty-six (36) months from the date that NewCo begins commercial operations and BTC has provided roaming services in all the specified areas and locations requested by NewCo or such other longer period as determined by URCA.

BTC's comments

BTC asserted that NewCo should not have the means to extend the national roaming period. BTC further noted that, as the providing operator, it should not be required to supply national roaming (i) beyond the scheduled end date for roaming, and (ii) in geographic areas that NewCo is required to cover as per its ISL. In order to minimize the risk of an extension, BTC proposed the inclusion of a requirement in the Draft Order for NewCo to provide URCA (minimum every 3 months) with updates on mobile build-out and compliance with roll-out commitments. In its response to CBL, BTC again commented that the duration of the obligation should be reduced to eighteen (18) months from the issuance date of NewCo's licences.

URCA's response to BTC's and CBL's comments

In reply to CBL, URCA confirms that the period referred to in Section 4.1 of the Draft Order shall not be shorter than the national roaming period. URCA further affirms that the national roaming obligation should endure for a period of up to twenty-four (24) months from the issuance date of NewCo's licences. As the justification for this decision was previously assessed (See question 6), URCA will not repeat its reasoning here.

In reply to BTC, URCA would like to state that Section 4 of the Draft Order does not allow for any automatic extension to the national roaming period. The obligation is for a period of up to twenty-four (24) months from the issuance date of NewCo's licences, and would be discontinued at that point. URCA accepts that there are circumstances (e.g., force majeure) that may warrant an extension to the national roaming period. However, any extension granted is within URCA's discretion and subject to the same standard of reasonableness as with other regulatory measures of this nature.

As to the proposed requirement for URCA to receive timely updates on NewCo's compliance with roll-out commitments, URCA considers that this is an unnecessary addition to the Draft Order. This is because NewCo's ISL already contains a monitoring framework of its network build-out obligations, and URCA therefore does not see the need to establish a separate or similar regime within the national roaming framework.

URCA's Final Position – Section 4 of the Draft Order

URCA has determined that the national roaming obligation shall endure for a period of up to twenty-four (24) months from the issuance date of NewCo's licences and would be discontinued at that point. Any request for an extension to the national roaming period would be considered only in limited circumstances where network roll-out has been delayed for reasons beyond NewCo's control and within URCA's discretion and subject to the same standard of reasonableness as with other regulatory measures of this nature.

4.4 National Roaming Coverage

Consultation Question 12: Do you agree with URCA's proposals on national roaming coverage? If not, why?

CBL's comments

CBL asked for clarification as to the meaning and intention of the current text in Section 5.1. Second, although agreeing with URCA that national roaming coverage does not contribute towards NewCo's network coverage and roll-out obligations, CBL asked that this be qualified to include the provision "*... provided that BTC and the second licensee have entered into an agreement on co-location and intra-island capacity.*" Third, CBL asked URCA to clarify "*...that notwithstanding Section 5.2 that BTC will not be able to impose any penalty or fines in the event that NewCo does not meet or exceed the forecast provided.*"

BTC's comments

After reviewing CBL's response, BTC stated that it "...considers Section 5.1 to be clear as written in terms of its intention and meaning", but "would welcome any further clarification URCA may offer." BTC was not in agreement with the proposed qualification, stressing that "...NewCo must take full responsibility for its own network coverage and rollout obligations. Its obligations do not and should not be extended to BTC directly or indirectly." BTC further noted that there are established processes and procedures for NewCo to negotiate agreements on co-location and intra-island capacity.

URCA's response to BTC's and CBL's comments

Concerning the intention and meaning of the current text of Section 5.1 of the Draft Order, URCA advises that this requirement is to prohibit NewCo from reselling any of the mobile support service features and/or capabilities acquired from BTC under a national roaming agreement to any other entity. URCA, therefore, sees no need to change the current text in Section 5.1 of the Draft Order.

In terms of CBL's proposed qualification to Section, URCA considered that the comment relating to co-location and intra-island capacity is out of the scope of the determination and order to be made pursuant to this consultation. URCA, therefore, sees no need to change the current text in Section 5 of the Draft Order.

As noted above (question 8), URCA generally sees no need for such penalties, unless there are clear cost justifications for them (i.e., in the case of high, ongoing fixed costs incurred by BTC in providing national roaming. Any one off, set-up costs, where applicable, could instead be recovered from a one-off charge to NewCo). URCA notes that this is further in keeping with the position taken with respect to the BTC URCA-approved RAIO, where no forecasting-related penalties are included.

However, if proposed by BTC URCA would examine carefully the justification for such charges, their level and their likely impacts. URCA, therefore, sees no need to change the current text in Section 5.2 of the Draft Order.

URCA's Final Position – Section 5 of the Draft Order

URCA will retain the current text in Section 5 of the Draft Order in the final Order.

4.5 Wholesale Tariff for National Roaming Services

Consultation Question 13: Do you agree with URCA's proposals on how tariffs should be set for national roaming services? If not, why?

CBL's comments

Please see CBL's submissions on question 8 above.

BTC's comments

Please see BTC's submissions on question 8 above.

URCA's response to BTC's and CBL's comments

URCA refers to its assessment of the comments received on question 8 and its final position thereto.

URCA's Final Position – Section 6 of the Draft Order

It is URCA's final determination to align Section 6 of the Draft Order with its final position on question 8 above.

4.6 Content of National Roaming Proposal and/or Agreement

Consultation Question 14: Do you agree with URCA's proposed obligations regarding the content of national roaming proposals and/or national roaming agreements? If not, why?

CBL's comments

As part of its first response, CBL stated that at minimum, a national roaming agreement or proposal should include the seven (7) technical and engineering requirements listed on page 9 of its submission.

CBL then outlined four (4) areas where it seeks clarification:

- BTC will not be allowed to suspend or terminate the national roaming services without the prior written consent of URCA;
- a roaming proposal should contain customer care principles;
- all requested and appropriate technical information set out in Section 8.2(ii) of the Draft Order shall be provided on a site-by-site basis; and
- BTC will be required to broadcast the PLMN of the second cellular mobile operator (i.e., NewCo).

CBL recommended that in Section 7.1(i) the phrase "price list" should be replaced by "Tariffs" in order to mirror the language in Section 6 of the Draft Order.

BTC's comments

BTC, in principle, was not opposed to the inclusion of the seven (7) technical and engineering requirements in a national roaming agreement or proposal. BTC, however, noted that it would need to better understand each of the requirements and suggested that this is better handled through the information exchange process under Section 8 of the Draft Order.

After reviewing CBL's response, BTC further noted that:

- There are instances in which BTC would not need URCA's approval or consent to terminate or suspend an area from the roaming service. For example, where NewCo has failed to meet its build-out obligation and URCA has not extended the obligation to provide roaming to those areas.
- It was unclear as to what consumer care principles CBL expects to be included in a national roaming agreement. BTC stated that it would have customer care responsibility for NewCo as a wholesale customer, while NewCo would have primary customer care for its subscribers regardless of whether they are on NewCo's or BTC's network.
- CBL's third proposal was excessive and CBL has not provided justification for detailed site-by-site information.
- CBL's last proposal is not consistent with standard roaming practice.

URCA's response to BTC's and CBL's comments

URCA does not object to the inclusion of seven (7) technical and engineering requirements in a national roaming agreement or proposal provided that such requirements are supported by BTC's networks and infrastructure. For the avoidance of doubt, it is the responsibility of BTC to demonstrate that a particular requirement is not supported by its network and infrastructure.

Regarding the four (4) clarification points raised by CBL, URCA responds as follows:

- The requirement for written approval by URCA before suspending or terminating the national roaming services is reasonable. URCA must have an opportunity to ensure that any suspension or termination is reasonable and to safeguard the interests of consumers, before BTC can suspend or terminate the National Roaming service.³⁸
- URCA was unclear about CBL's comment on customer care principles. URCA, however, would not rule out the inclusion of relevant customer care principles in a national roaming agreement but emphasises that such principles must be consistent with this Order, relevant licence conditions, the Comms Act and any other relevant documents. In particular, it is important that there is no discrimination in service quality between self-supply and national roaming.
- Regarding the requirement for BTC to provide all requested and appropriate technical information set out in Section 8.2 (ii) on a site-by-site basis, URCA's position is that BTC should provide all relevant requested technical information including but not limited to technical data, engineering information and network requirements, and where both parties agree, or URCA directs, such information should be provided on a site-by-site basis.

³⁸ See Section 10.3 of Order

- Regarding the requirement for BTC to broadcast NewCo's PLMN, URCA notes that PLMN comprises MCC and MNC. In common with standard industry practice, it is URCA's position that BTC is only required to broadcast its own MCC and MNC.

Lastly, URCA agrees to the word change CBL proposed to Section 7.1 of the Draft Order.

URCA's Final Position – Section 7 of the Draft Order

It is URCA's final determination to amend Section 7 of the Draft Order so the final Order reflects the following:

- Inclusion of technical and engineering requirements specified in relevant GSM Association Documents.
- Inclusion of relevant customer care principles in a national roaming agreement provided these are consistent with this Order, relevant licence conditions, the Comms Act and any other relevant documents.
- A requirement for BTC to provide all requested and appropriate technical information set out in Section 8.2 (ii) of the Draft Order.³⁹ BTC should provide all relevant requested technical information including but not limited to technical data, engineering information and network requirements, and where both parties agree, or URCA directs, such information should be provided on a site-by-site basis.

4.7 Information Requests

Consultation Question 15: Do you agree with URCA's proposed obligations regarding responding to requests for information on national roaming? If not, why?

CBL's comments

CBL outlined four (4) areas where it seeks clarification as follows:

- to eliminate the requirement at Section 8.1(i) for NewCo to provide BTC with the date on which national roaming begins;⁴⁰
- to amend Section 8.1 (ii) to require NewCoto set out the national roaming services it is requesting from BTC. This proposed change is to ensure BTC is not privy to the planned service offerings of the second licensee prior to the commercial launch of their operations;⁴¹

³⁹ Now Section 7.2 of the Order

⁴⁰This is to ensure BTC is not aware of the date the second licensee plans to commence its commercial operations.

⁴¹This is to ensure BTC is not privy to the planned service offerings of the second licensee prior to the commercial launch of their operations.

- to add a requirement in Section 8.2 for BTC to (i) provide NewCo with a complete national roaming agreement that will form the basis of negotiations between the parties; and
- to confirm that the list set out in Section 8.1 of the information NewCo must provide to BTC is exhaustive.⁴²

BTC's comments

Upon reviewing CBL's response, BTC stated that:

- the first clarification is nonsensical, because the providing operator (BTC) would need to know the date on which roaming services are actually required;
- it was not sure the second clarification item "*...makes much of any difference to the Draft Order...*". However, BTC then suggested that Section 8(ii) "*...should be worded so that requested national roaming services are fully and clearly defined.*"; and
- the third clarification item is at odds with the intent of Section 8 of the Draft Order (i.e., to identify information to be exchanged between the parties that would be relevant to the formulation of a national roaming agreement).

URCA's response to BTC's and CBL's comments

Like BTC, URCA struggles to understand the thinking behind CBL's first proposal. CBL would have known that it is standard roaming practice that the providing operator is notified of the date national roaming officially begins. This is necessary for billing and other purposes. Thus, URCA does not see the need to depart from standard industry practice on this occasion. Hence, CBL's proposal is rejected.

Likewise, the proposed clarification to the current text in Section 8.1 is an unnecessary request. Section 8.1 (ii) as drafted does not require NewCo to divulge commercially sensitive information to BTC. Instead, the aim is to ensure that requested national roaming services are fully and clearly defined and BTC receives the information necessary to understand NewCo's roaming request and provisioning of the requested services. Hence, CBL's proposal is rejected.

On the third clarification item, URCA shares BTC's view that this request is out of step with the intent of Section 8 and is therefore rejected. Hence, CBL's proposal is rejected.

URCA confirms that the list set out in Section 8.1 of the Draft Order is meant to be exhaustive. However, this does not preclude BTC from seeking clarification and/or additional information in respect of the requested roaming services.

⁴²CBL added that the word "including" in the Section suggests that NewCo must provide additional information and/or BTC can request additional information.

URCA's Final Position – Section 8 of the Draft Order

It is URCA's final determination to retain the current text of Section 8 of the Draft Order.

4.8 Implementation of National Roaming Obligation

Consultation Question 16: Do you agree with URCA's proposals on the implementation of the national roaming obligation? If not, why?

CBL's comments

CBL outlined five (5) areas where it seeks changes to the proposed timelines:

"in Section 9.1 the ninety (90) day period should be reduced to thirty (30) calendar days;

in Section 9.2 the proposal for national roaming and a complete national roaming agreement should be submitted to URCA within fifteen (15) calendar days of the date of URCA's determination;

in Section 9.2 URCA should be entitled to make BTC's proposal, including for the avoidance of doubt the complete national roaming agreement, available to the successful bidder in the Phase II spectrum auction;

in Section 9.3 URCA should issue a final decision or determination on the submission within seven (7) days of receipt of the draft proposal; and

in Section 9.4 the twenty-one (21) calendar days should be reduced to seven (7) calendar days."

Lastly, CBL contended that URCA should clarify whether, during the review period set out in Section 9.7 and in the event that URCA requires amendments to be made to national roaming agreement pursuant to Section 9.7, the parties will be obliged to continue to implement, test and put into commercial operations the agreement.

BTC's comments

Upon reviewing CBL's response, BTC was generally of the view that the proposed changes to the timelines are unrealistic and likely unworkable in some instances.

URCA's response to BTC's and CBL's comments

In the circumstances and taking into consideration the opposing views of the respondents and the need for an expedited roaming agreement, URCA has revised the timelines as follows in its final determination and order:

- in Section 9.1 the ninety (90) day period is reduced to twenty-one (21) calendar days;
- in Section 9.2 the proposal for a national roaming agreement is now required to be submitted to NewCo and URCA fourteen (14) calendar days of BTC receiving a written request for national roaming from NewCo ;

- in Section 9.3 URCA will consult with the parties and issue a final decision or determination on the proposed national roaming agreement within the shortest timeframe feasible; and
- in Section 9.4 the twenty-one (21) calendar days should be reduced to seven (7) calendar days.

URCA's Final Position – Section 9 of the Draft Order

Further to the above, it is URCA's final determination to amend the Section to indicate the above revised timelines.

4.9 Disputes and Complaints

Consultation Question 17: Do you agree with URCA's proposals on disputes and complaints? If not, why?

CBL's comments

CBL agreed that disputes and complaints should be resolved pursuant to the Comms Act and URCA's ADR Schemes.

BTC's comments

BTC provided no comment on this question.

URCA's response to BTC's and CBL's comments

Given the responses received, URCA is not proposing any material change to the current text of Section 10 of the Draft Order.

URCA's Final Position – Section 10 of the Draft Order

It is URCA's final determination to retain the current text of Section 10 of the Draft Order.

4.10 Compatible Standards

Consultation Question 18: Do you agree with URCA's proposals on compatible standards for national roaming? If not, why?

CBL's comments

In its response on question 18, CBL cross-referenced its comments on questions 9, 10 and 11 (or Sections 4.1, 4.2 and 4.6)above.

BTC's comments

BTC stated that, absent a definition of "seamless roaming", it is unable to confirm whether it can support the contemplated functionality.

URCA's response to BTC's and CBL's comments

In view of BTC's comment, URCA has added a definition of seamless roaming to Section 1 of the Draft Order.

URCA does not believe it is necessary to repeat its assessment of CBL's comments on questions 9, 10 and 11 here. URCA, however, has reviewed the current text in Section 11 of the Draft Order and is satisfied that there is no conflict between its final position on these questions and Section 11 of the Draft Order.

URCA's Final Position – Section 11 of the Draft Order

It is URCA's determination to retain the current text in Section 11 of the Draft Order. URCA, however, will add a definition of seamless roaming to Section 1 of the Draft Order.

5 Conclusion

In this document, URCA set forth its findings that BTC should provide national roaming services to NewCo for a restricted period of up to 24 months. This interim service is intended to enable NewCo to offer its subscribers the ability to make and receive calls, send and receive messaging services, and access Internet and other services in areas of The Bahamas where it has not yet built its cellular mobile network. URCA also confirmed the SMP obligations imposed on BTC to ensure that all reasonable demand for national roaming is met on appropriate and proportionate terms or conditions during such interim period.