The Bahamas Telecommunications Company Limited

Initial Response to:

Retail Fixed Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009

Preliminary Determination
ECS 04/2024
Issued: 28 February 2024

Submitted to:

Utilities Regulation & Competition Authority (URCA)

Legal and Government Affairs,
April 29, 2024

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1. INTRODUCTION

The Bahamas Telecommunications Company Limited ("BTC") herein provides its initial response to the Utilities Regulation and Competition Authority's ("URCA") Preliminary Determination ("PD") *Retail Fixed Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009*, ECS 04.2024, issued 28 February 2024.

The PD divides the retail fixed services market in The Bahamas into four segments: voice, broadband, pay TV and bundles of these same services, and provides the preliminary results of URCA's market definition and dominance assessments for each. In addition, it provides URCA's preliminary determinations relating to the need for and nature of any proposed *ex-ante* remedies. The PD includes 13 Consultation Questions relating to URCA's preliminary findings for which it is seeking feedback from interested parties. In what follows, BTC first provides its general comments on the PD and then its responses to each of the Consultation Questions posed in the PD. The final section provides BTC's concluding remarks.

2. GENERAL COMMENTS

First and foremost, BTC welcomes URCA's Fixed Market Review PD. A review of the regulatory framework for the retail fixed services market has been long overdue. Given the length of time and many significant developments since the last review, BTC believes that this review provides an excellent opportunity to evaluate the current and projected structure and competitive dynamics of the fixed services segment with a fresh perspective and, importantly, in the context of the development of the overall electronic communications sector ("ECS") in The Bahamas, including URCA's recently concluded mobile market review and related final determination two years ago (i.e., the "2022 Mobile Market FD").[1] Ultimately, the goal of the present review fixed market review is to determine whether *ex-ante* price regulation remains necessary at this stage of the development of the ECS in The Bahamas. BTC believes that it is time to adopt an *ex-post* competition law approach in the fixed market as is the case in the mobile market.

There are several reasons to adopt a more liberalized regulatory approach in the retail fixed services market and, more generally, the ECS in The Bahamas. First, the fixed and mobile sectors are analogous in terms of market structure and competitive dynamics. Second, the fixed and mobile sectors are closely related, with many of the services in the two markets being substitutable today. Third, there has been massive technological change and innovation in the two markets since URCA's last fixed market review in 2014 (the "2014 Fixed Market Review").[2] Together these factors considerations support adopting a similar regulatory approach in the fixed market as in the mobile market. Also, BTC considers URCA's market definition and dominance assessment

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[1] *URCA, Retail Cellular Mobile Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009, Statement of Results and Final Determination, ECS 15/2022, 15 July 2022.*

[2] URCA, *Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009*, Response to Public Consultation and Final Determination, ECS 14/2014, 2 December 2014.

approaches to be overly rigid and backwards looking, which leads to the incorrect conclusion that nothing has changed in the fixed market since 2014. These general concerns with the PD are addressed in the following sections.

The Fixed and Mobile Markets are Analogous in Structure and Competitive Dynamics

The PD is very similar to URCA's 2014 Fixed Market Review in form and approach.[3] As a consequence, in terms of market definition and dominance considerations, the PD is structured as an exercise to verify whether there is any reason to alter URCA's previous 2014 findings. Following this approach, URCA largely reconfirms its decade old market definition and dominance findings, despite massive structural and competitive changes in the ECS in The Bahamas since 2014.

BTC considers that a fresh approach should be followed, one which starts with consideration of the fixed services market as a whole. URCA's recent mobile market review stands in stark contrast to URCA's preliminary findings in the present PD. In the mobile market review, URCA found that there is a single product market for bundled mobile services (including voice, messaging and data/video services) and a single national geographic market. While there are standalone mobile voice/messaging and data services also available to consumers, URCA found no reason to define them as separate markets for regulatory purposes. The mobile market in The Bahamas is served by BTC and Cable Bahamas Limited's ("CBL") subsidiary, Be Aliv Limited ("Aliv" or together "CBL/Aliv"). Both BTC and CBL/Aliv are well established operators who vigorously compete with one another in the mobile market, and neither was found to be dominant or possess significant market power ("SMP") in the provision of mobile services. Consequently, in the 2022 Mobile Market FD, URCA concluded that *ex-ante* price regulation of mobile services is unnecessary, and that *ex-post* competition law is sufficient to protect the interests of mobile service consumers.

In BTC's view, a similar approach for the fixed services market was not considered in the PD, despite the near identical market structures and competitive dynamics of the fixed and mobile markets in The Bahamas. As the PD reports, the vast majority of fixed service consumers – close to 90% – subscribe to bundled services.[4] Relatively few subscribe to standalone fixed services. Moreover, the standalone markets (especially for fixed voice and pay TV service) are in a state ongoing, steady decline.[5] Even fixed broadband on a standalone basis is shrinking rather than growing.[6] Bundles are by far the norm today, as in the mobile market. Also, as in the mobile market, BTC and CBL/Aliv are the major players in the fixed services market segment. Both have been investing heavily in new fiber network facilities and, therefore, are competing vigorously for customers, with a focus on bundled offerings, though both provide standalone services as well. However, unlike mobile, there are numerous Other Local Operators ("OLOs") in the fixed market using terrestrial and satellite-based wireless technologies to provide fixed broadband services. This

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3 URCA, *Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009*, Response to Public Consultation and Final Determination, ECS 14/2014, 2 December 2014.

4 PD, Figure 4, page 26.

5 PD, Figure 1, 23.

6 Ibid.

includes the recent entry of Starlink that offers low-earth orbit ("LEO") satellite-based broadband connectivity throughout The Bahamas. And, also unlike the mobile market, there are mandated wholesale broadband services provided by BTC and CBL available to support further entry and expansion in the fixed services market in The Bahamas. Consequently, the competitive dynamics of the retail fixed market in The Bahamas, if anything, exceeds that of the retail mobile market. Accordingly, in BTC's view, the same regulatory framework adopted in 2022 in the mobile market should equally apply in the fixed market – namely, reliance on *ex-post* competition law rather than *ex-ante* price regulation.

Of course, one major difference between the mobile and fixed markets is that the footprints of BTC's and CBL's fixed networks differ in scope. However, the two networks overlap where the vast majority of the population of The Bahamas resides – namely New Providence, Abaco, Grand Bahama and Eleuthera[7] which covers roughly 95% of the population of The Bahamians.[8] In other areas where they do not overlap, consumers' interests can be readily be protected through a national unform pricing obligation.

The Fixed and Mobile Markets are Closely Interconnected

When URCA conducted its 2014 Fixed Market Review, BTC was the sole supplier of mobile services in The Bahamas. At the time, mobile penetration was below 85% and early 4G mobile wireless technology was just being deployed. Since then, Aliv launched its mobile services in 2016 and within a few years acquired over 50% of the market, while mobile penetration increased to over 100%. Advanced 4G LTE mobile wireless technology has been deployed throughout the country, offering broadband speeds comparable to those provided over fixed broadband networks. Soon 5G will provide even faster wireless broadband speeds. Mobile services also provide voice capabilities that far exceed those of a fixed landline – i.e., mobility, voice and video calling, free over-the-top ("OTT") domestic and international calling, including conference calling (using apps such as WhatsApp, Zoom, Skype, among many others). In addition, mobile services provide broadband connectivity that can used as a substitute for fixed broadband access which, among other things, includes the means to watch free and subscription-based video services (e.g., YouTube, Netflix, Apple TV, among others) either on a smartphone itself or cast to a TV.

The PD acknowledges that legacy fixed voice services have been declining steadily and significantly for years. It does not, however, attempt to answer the question as to why this is the case, even though the answer is obvious. Mobile penetration has grown to over 100%, while fixed voice penetration has declined steadily. Consumers have been steadily dropping fixed voice services in favour of mobile services for years now. Mobile services prices may be somewhat higher, but they also offer far greater value relative to legacy fixed voice service. The PD

7 As per PD footnotes 120 and 121

8 Commonwealth of The Bahamas, Census of Population 2022, Preliminary Results, Table 1, pages 6-7. https://www.bahamas.gov.bs/wps/wcm/connect/c0d9fae8-54df-49e3-b4b9-92e29e0b264c/2022+CENSUS+PRELIMINARY+RESULTS_FINAL+April+12+2023.pdf?MOD=AJPERES.

incorrectly dismisses the obvious substitutability of mobile for fixed services and, as a result, mischaracterized the scope of the market for voice services.

Similarly, the importance of mobile as broadband connectivity service today is also understated in the PD. With 100% penetration, mobile wireless provides an important means of broadband connectivity for many subscribers and, therefore, represents a substitute to fixed broadband in many cases.

The ECS is fundamentally about connectivity today, which can be equally accomplished using either wireline or wireless technologies or a combination of the two. The PD unnecessarily and inappropriately creates an artificial regulatory wall between the two ECS market segments.

The Fixed Market has experienced Massive Technological Change and Innovation

URCA suggests in the PD that the fixed voice, broadband and pay TV services have not been characterized by innovation since its last review in 2024 which, presumably by implication, means that technological change has been limited.[9] The basis for these assertions is unclear, but in any event, they could not be further from reality.

The voice market has undergone massive disruptive technological change over the last ten years. As noted, many consumers have since gravitated to mobile wireless services for voice communications purpose. And while OTT apps, such as Skype, had only recently been introduced at the time of the 2014 Fixed Market Review, they have since exploded in popularity and use. Few people had heard of Zoom prior to 2020 but, after the COVID-19 pandemic hit, the Zoom app was downloaded 500 million times that year alone.[10] The use of Zoom, and similar communications apps such as WhatsApp, Teams, Webex and Google Meet, are widespread today. The quality of these services is equal to that of a legacy wireline voice connection, if not even higher, given they can also provide face-to-face video connectivity as well as group calls. Legacy wireline voice conference calls are now a thing of the past because of these OTT apps. The high penetration rates of wireline and wireless broadband services means that the vast majority of Bahamians have access to and use these OTT voice and video call substitutes. These software-based technological and innovative developments have reshaped the voice communications segment of the fixed and mobile wireless segments of the ECS.

Broadband has also experienced massive technological change and innovation over the last ten years. At the time of the 2014 Fixed Market Review, BTC offered DSL Internet access services at 8 and 16 Mbps download speeds, while CBL offered cable Internet access at speeds of 15, 30 and 50 Mbps. Since then, BTC has invested extensively in next-generation network upgrades, transitioning from legacy copper to fiber technologies. Today BTC offers Gigabit fiber broadband connectivity. BTC is also currently in the process building out next-generation FWA which will bring fiber-equivalent broadband speeds to underserved areas of the country. CBL has also

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9 PD, page 68-69 (voice), p 109 (broadband) and page 140 (pay TV).

10 Forbes, *Here are the 10 Most Downloaded Apps of 2020*, 7 Jan 2021. https://www.forbes.com/sites/johnkoetsier/2021/01/07/here-are-the-10-most-downloaded-apps-of-2020/?sh=131332e05d1a.

upgraded and expanded the range of service plans, including fiber-based broadband connectivity. In addition, there are numerous mobile broadband services available that did not exist in 2014, including MiFi connectivity that far exceeds the Internet connectivity speeds that were available ten years ago. Plus, LEO-satellite-based broadband services, with download speeds of over 100 Mbps, are available today – a broadband service that was not even contemplated in the 2014 Fixed Market Review. Consequently, the broadband market has seen extensive technological and innovative change in The Bahamas since URCA's last fixed market review.

The same is true of the pay TV segment of the market. BTC now offers IPTV services over fiber-to-the-home ("FTTH") network facilities – a service that did exist in 2014. CBL has made similar upgrades and now also offers IPTV services. In addition, and more importantly, the explosive popularity and use of online streaming services has had a significant disruptive effect on the legacy pay TV market,[11] which explains its steady decline. There is a steadily increasing range of options for non-subscription as well as ad-supported or ad-free subscription-based online streaming services at prices that are very competitive with legacy pay TV products.

Over the last ten years, rapid technological change and innovation has been the norm, contrary to what is suggested in the PD. As a result, consumers have far more choice today than in 2014 in every segment of the ECS – fixed and mobile.

The SSNIP Test Approach to Market Definition is Highly Subjective

In the PD, URCA relies on a commonly used approach – namely the Small but Significant Non-transitory Increase in Price ("SSNIP") or Hypothetical Monopolist test – for market definition purposes. In effect, the SSNIP test is little more than a thought experiment for hypothetical price increase scenarios. On the demand-side, the test considers hypothetically what consumers might do in the face of a 5% or 10% increase in the price of a specific product of service? What might they consider to be possible substitutes to avoid or mitigate the impact of such a price increase, if anything? And on the supply-side, the test considers hypothetically what other suppliers might do in the face of the 5% or 10% increase in the price of the product of service in question. Would they enter or expand into the market or do nothing? The answers to these questions are highly subjective. Two reasonable people may come to different conclusions regarding the likely reactions of consumers and alternative suppliers in such hypothetical situations.

To answer the many demand-side SSNIP tests outlined in the PD, URCA relied heavily on a Customer Survey it had conducted by an external contractor for this consultation process. However, consumer responses to numerous hypothetical pricing scenarios in the context of such surveys can be of questionable reliability. What respondents might say they would do in the face of a hypothetical SSNIP versus what they would do in the face of an actual SSNIP can differ significantly. In any event, URCA refused to place a copy of the Customer Survey on the public record along with the PD, so interested parties are not able to assess the validity or reliability of its methodology or results. Only selected Customer Survey results were included in the PD.

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11 Forbes, *Top Streaming Statistics in 2024*, 2 Feb 2024. https://www.forbes.com/home-improvement/internet/streaming-stats/.

That said, the subjective nature of SSNIP tests is evident from the wide variations and inconsistencies in preliminary conclusions drawn in the PD regarding services considered to be in the same markets, while others are found to be in separate markets. For instance, mobile and fixed voice services are not considered to be substitutes because of price differentials between the two, yet residential and business fixed services are considered to be in the same market despite even greater differences in price between the two. There are many other inconsistencies as well, which BTC addresses in response to the Consultation Questions in the following section.

In general, BTC considers that the SSNIP tests presented in the PD are overly rigid in application, and in many cases the resulting conclusions in the PD contradict the results of the Customer Survey. As a result, BTC considers the proposed market definitions in the PD to be flawed and out of step with today's market realities.

There is No Justification for *Ex-Ante* Regulation of Fixed Service Prices

Following URCA's market definition and dominance analysis of the fixed market, Section 8 of the PD turns to the question of whether *ex-ante* regulation of any segments of the fixed market may be necessary. The framework it uses to address this question involves assessing whether any or all the following conditions apply in the case of fixed services market defined on a preliminary basis in the PD:[12]

i) Significant and non-transitory barriers to entry and expansion;
ii) No emerging competition; and
iii) *Ex-post* competition law is unlikely to be sufficient to resolve any abuses of a dominant position.

In BTC's view, none of these three conditions applies in the case of the fixed market in The Bahamas today, any more than they do in the mobile market.

There is no doubt that building a new wireline network throughout the Bahamas is a capital intensive and time-consuming undertaking. Yet, both BTC and CBL are in the process of over-building their existing copper and coax networks with fiber to offer new fiber broadband, IPTV and VoIP services. BTC is also deploying next generation FWA services that will offer fiber equivalent broadband connectivity, including IPTV. Aliv, in a few short years, completed the buildout of an entirely new 4G LTE mobile wireless network and offers voice, messaging and broadband data/video services nationwide. Starlink offers LEO satellite-based broadband connectivity nationwide. There are numerous smaller OLOs in the fixed market, typically relying on FWA technology that can be built and expanded at relatively low costs and, indeed, supplemented by available mandated wholesale broadband service. Consequently, if anything, the barriers to entry and expansion are lower in the fixed than the mobile market (where access spectrum regulated). Competition is not only emerging in the fixed services market today, but it is vigorous and will continue to be so into the foreseeable future.

12 PD, page 166.

In the context of the third and final condition listed above, URCA considered whether any specific competition or consumer harm issues are of significant concern – e.g., potential for excessive pricing, predatory pricing, margin squeeze, undue discrimination, undue bundling, and anti-competitive lock-in. However, no material concern is identified in the PD. URCA suggests that excessive pricing could be a risk, yet the Customer Survey results contradict URCA's position in this respect. Consistently, 60% to 70% of respondents indicated that they would react negatively to a SSNIP applied to any the fixed services, whether standalone or bundled[13] – i.e., in the face of a SSNIP they would drop or downsize the service, reduce use or switch supplier, among other things. In other words, a SSNIP of 5% to 10% would result in a far larger reduction demand – i.e., the Customer Survey results suggest that price elasticity of demand for fixed services is high.

The same potential competition or consumer harm issues apply to mobile services, yet URCA rightly chose to rely on *ex-post* competition law to deal with any such concerns that could arise in the future. In BTC's view, the same approach is appropriate for the fixed services market at this stage of the development of the ECS in The Bahamas.

BTC also notes that issues relating to matters such as undue discrimination, undue bundling, and anti-competitive lock-in can be addressed through the Consumer Protection Regulations ("CPR"). There is no need to create an *ex-ante* price regulation regime to address such concerns.

Affordability Concerns should be addressed as USO not Competition Issues

Lastly, on the question of the potential for excessive pricing, it appears from the PD that URCA's concern may be more about "affordability" rather than excessive prices from a competition perspective. Indeed, according to the PD, affordability seems to be the only real concern URCA notes the case for fixed voice services.[14] As URCA is aware, on a historical cost accounting separation basis, BTC's residential standalone basic fixed voice service is priced below cost. BTC understands that a similar situation applies in the case of CBL's Prime Local pay TV product. However, affordability concerns are not competition law matters, but rather social policy or Universal Service Obligation ("USO") issues. As such, BTC submits that they should be addressed in the context of URCA's forthcoming USP review, and not as part of an dominance and *ex-ante* remedy assessment process.

3. RESPONSES TO THE CONSULTATION QUESTIONS

In this section, BTC provides its responses to the 13 Consultation Questions included in the PD.

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13 For standalone fixed voice, broadband and pay TV and bundled fixed services see page 52 (Figure 16), page 87 (Figure 25), 119 and 160, respectively. The PD inexplicably does not include the full Customer Survey results for the respondents reactions to a SSNIP in the case of pay TV and fixed bundles.

14 PD, page 169.

Question 1 – Market definition for Retail Fixed Voice Services

Do you agree with URCA's proposed definition of the market for retail fixed voice services in The Bahamas? If not, why?

BTC disagrees with URCA's proposed definition of the market for voice services in The Bahamas – i.e., that it should be limited to only standalone fixed voice access and calling services.

In the PD, URCA relies on a SSNIP test approach, together with available market data and Customer Survey results, to determine market definitions for fixed services on the PD. The SSNIP test provides a framework to speculate on consumers' likely reaction to a hypothetical increase in the price of a service in question – in this first case, retail fixed voice access and calling services. In the face of a hypothetical SSNIP, URCA considers whether mobile wireless access and calling, OTT access and calling services, and broadband services would be viewed as demand-side and/or supply-side substitutes by retail fixed voice access and calling service consumers. In addition, using the same SSNIP test, URCA considers whether residential and business retail fixed voice access and calling service are in the same market.

In BTC's view, URCA applied the SSNIP test in this case (and others in the PD) in an overly rigid and unrealistic manner. Moreover, important market realities and trends were ignored.

First, BTC's residential standalone basic fixed voice access and calling service is currently priced at $15 per month (and even lower for seniors) and has remained at this same price level for years, even decades, now. On an historical cost accounting separation basis, the service is priced below cost. Yet even with no nominal price increases or, in other terms, with annual real price reductions for many years now, consumers have nonetheless chosen to drop their fixed voice lines at a steady and significant rate. Therefore, setting aside considerations of possible substitutes, a hypothetical SSNIP would unquestionably further accelerate fixed voice disconnections and/or result in significant reductions in usage (e.g., out-of-plan calling or dropping add-on call plans), all else equal.

Second, mobile penetration in The Bahamas is over 100%. This implies that virtually every existing fixed voice subscriber also has a mobile wireless subscription that includes voice and high-speed data services. Therefore, when considering the likely reaction to a hypothetical SSNIP in the case of fixed voice subscribers, the relevant question is not whether fixed voice subscribers would purchase a mobile service plan as a substitute in response to the SSNIP, but rather would they continue to subscribe to fixed voice service since they already have a mobile subscription. The evidence shows that even without a SSNIP, consumers are in fact steadily dropping fixed voice access and calling services. An actual SSNIP would only accelerate ongoing reductions in fixed voice subscriptions and usage.

Third, as acknowledged in the PD, there are a variety of widely used mobile apps that provide OTT voice and video calling capabilities that can be used for domestic and international communications purposes at no additional cost (e.g., WhatsApp, Zoom, Skype, etc.). With mobile penetration in The Bahamas of over 100%, virtually all consumers already have access to and use OTT communications apps. Indeed, according to the PD, 89% of mobile subscribers use OTT services. Here again, when applying a hypothetical SSNIP in the case of fixed voice subscribers, the relevant question is not whether they would purchase a mobile service plan and install an OTT communications app as a substitute in response, but rather would they continue to subscribe to fixed voice service since they already have a mobile a plan and one or more OTT apps installed on their smartphones. The answer is once again obvious from industry trends – they would very likely either terminate or reduce their use of fixed voice services.

Fourth, from a supply-side perspective, BTC's and Aliv's mobile wireless networks exceed the coverage of BTC's and CBL's wireline networks. Mobile connectivity is available throughout the country, including all fixed locations served by BTC and CBL. Unquestionably, mobile wireless networks duplicate fixed connectivity and, therefore, they are supply-side substitutes with or without a SSNIP applied to fixed voice services.

Therefore, BTC submits that it is simply commonsense that there is a single technology-neutral market for voice communications in The Bahamas today, which includes connectivity via fixed line and wireless technologies, and also includes analog PSTN, VoIP and OTT communications technologies.

Further, while residential and business voice service market segments could be considered as separate defined markets following a SSNIP test approach, BTC agrees with URCA that at this point in the evolution of the ECS it serves no regulatory purpose to treat them separately. The same applies for all fixed services covered in the PD with provided to residential or business customers.

More generally, given consumers' declining interest in standalone fixed services and strong preference for bundled fixed services (close to 90%),[15] BTC submits that standalone voice services should be seen as falling within the market for all fixed services, standalone and bundled. This would be analogous to the treatment of voice services in the mobile market as per URCA's 2022 Mobile Market FD.

Lastly, BTC agrees that the geographic market for voice services is national in scope, as should be the case for fixed services more generally.

Question 2 – Dominance Assessment in Retail Fixed Voice Market

Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail fixed voice service market? If not, please set out your alternative views and provide evidence to substantiate your position.

BTC disagrees with URCA's preliminary determination that BTC is dominant or, equivalently, possesses SMP in the retail standalone fixed voice service market. URCA's preliminary dominance is based on a flawed definition of the voice services market, which for the reasons provided above, incorrectly excludes mobile wireless and OTT voice services from the defined market for voice services in the Bahamas.

15 PD Figure 4, pages 25-26.

The Customer Survey results are instructive in this respect. They indicate that only 34% of fixed voice service subscribers faced with a hypothetical SSNIP would "do nothing" in response.[16] However, the results also indicate that the vast majority, 66%, of fixed voice service subscribers would in fact "do something" – such as terminate or reduce use of the service altogether or, more likely, given the over 100% penetration level of mobile services, switch to using their existing mobile service together with OTT apps for calling purposes. Consequently, if an actual SSNIP were introduced, it would very likely be unprofitable – i.e., a SSNIP of 5% to 10% would result in a far larger reduction in demand. The Customer Survey results imply that price elasticity of demand is high. As a consequence, a SSNIP would only serve accelerate the ongoing decline in subscribership to legacy fixed voice services, and increase Bahamians' reliance on mobile wireless voice services, along with OTT services.

The fact that BTC's market share of the "standalone" fixed voice services market is high is irrelevant in this context given the legacy nature and declining state of this segment of the market. Bundled fixed services are the norm today as the Customer Survey results show. CBL has the largest share of the bundled services market, which includes fixed voice service. Both CBL/Aliv and BTC are similar in scale, scope and capacity in the fixed and mobile markets in The Bahamas. CBL/Aliv could easily respond to any attempt by BTC to exercise SMP in the standalone fixed voice services market.

URCA suggests that there are barriers to entry in the standalone fixed voice services market and that it sees no "prospect of a new Licensee entering the market within the foreseeable future". BTC agrees that no new entry into the "standalone" fixed voice services market is likely if the assumption is that any such new entry would involve the construction of a new fixed network in addition to BTC's and CBL's fixed networks. However, there has already been new entry. Aliv has built a second mobile wireless network, adding to BTC's existing wireless network. Consequently, there are currently four competing voice networks.

BTC submits that the evidence clearly shows that there is no dominance or SMP concern in relation to standalone fixed voice services at this stage of the development of the ECS in The Bahamas. Moreover, in BTC's view, it would be more appropriate to consider standalone fixed voice services as an interrelated component of bundled fixed service market given consumers' overwhelming preference for bundles over standalone services. In this regard, BTC considers that the evidence also clearly shows that there is no dominance or SMP in respect of fixed service bundles.

Question 3 – Market definitions for Retail Fixed Broadband Services

Do you agree with URCA's proposed definitions of the markets for retail fixed broadband services in The Bahamas? If not, why?

BTC disagrees with URCA's proposed definition of the market for retail fixed broadband services in The Bahamas – i.e., that it is limited to standalone fixed broadband services and double-play bundles including fixed voice and fixed broadband services.

[16] PD, Figure 16, page 52.

BTC is of the view broadband connectivity is the core component of communications service bundles that include broadband connectivity together with voice and video (pay TV or online streaming) services. BTC considers that a single market for fixed services, including standalone and bundled fixed services, is appropriate, given that close to 90% of fixed broadband services are purchased as multi-product bundles.[17] This is not unlike the mobile market where vast majority of subscribers subscribe to mobile service bundles (which include voice, messaging, and data/video functionality).

While BTC is of the view that standalone and bundled fixed services should and can be considered as part of a single market, BTC otherwise disagrees with URCA's SSNIP test analysis through which it finds on a preliminary basis that standalone and only double-play bundles including fixed voice and fixed broadband services are in the same market. The logic behind hypothetical SSNIP test conducted to reach this preliminary conclusion is difficult to follow. The finding appears to be based on a scenario under which a hypothetical SSNIP applied to standalone broadband service could have the effect of narrowing the price gap between standalone broadband and double-play broadband and voice bundles so that some subscribers would then upgrade from a standalone to a double-play bundle, and thereby spend even more, in response to the hypothetical SSNIP. However, if a hypothetical SSNIP applied to standalone broadband, why would it not also apply to the same service when bundled with voice – maintaining the price gap between the two service options? Also, if a consumer already does not have fixed voice service (perhaps because he/she has mobile service), why would the consumer decide to purchase fixed voice service solely because the price of standalone broadband has increased? The logic in the PD in this regard is difficult to follow. In any event, BTC considers that is shows that ultimately there should be a single market encompassing standalone and bundled fixed services (broadband, voice and pay TV) – the price differentials between the bundles are no more relevant than they are for mobile bundles in the mobile market.

BTC is of the view that there is a single nationwide market for standalone and bundled fixed services since there are no substantive differences in the way these services are marketed or consumed across the country. That said, BTC is not opposed to dividing the market into two geographic areas based on CBL's more limited wireline network footprint compared to BTC for regulatory purposes – i.e., Geographic Markets 1 and 2, respectively. However, as noted, Geographic Market 1 covers the vast majority of the consumers in The Bahamas – i.e., roughly 95% of the population, whereas Geographic Market 2 covers a wide range of islands but only a small percentage of the population.

Question 4 – Dominance Assessment in Retail Fixed Broadband Markets

Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail fixed broadband service markets? If not, please set out your alternative views and provide evidence to substantiate your position.

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[17] PD, Figure 21, page 75.

BTC disagrees with URCA's preliminary view that CBL is dominant in the provision of fixed broadband services in Geographic Market 1 and BTC dominant in Geographic Market 2.

As noted, roughly 95% of the population of The Bahamas resides in Geographic Market 1. BTC and CBL are building out fiber networks in Geographic Market 1 (and in BTC's case beyond) and are competing vigorously to attract new customers to their respective new and far higher speed fiber-based broadband services and bundles, including VoIP and IPTV services. Given the competitive dynamics of the market – not just for standalone broadband, but fixed services collectively – reliance on market shares alone to determine dominance is inappropriate.

As well, according to the Customer Survey results, only just over 40% of respondents indicated that they would "do nothing" in response to a SSNIP applied to fixed broadband service.[18] That implies the majority – close to 60% – would "do something" in response – including terminating the service, downsizing (i.e., moving to a lower speed, lower cost plan), switching to another supplier, including fixed and mobile wireless alternatives. This strongly suggests that a SSNIP would not be profitable in the case of standalone or bundled fixed broadband services given the potential for strong negative customer reactions.

The PD wrongly suggests that there is no prospect of new entry or expansion in the fixed market. The evidence clearly contradicts these assertions. BTC and CBL have invested extensively in new fibre network builds in recent years. BTC is also investing in next-generation FWA. These investments have and are in the process of replacing legacy copper (DSL) and older cable network facilities – in effect, duplicating and expanding the reach of existing legacy networks. Starlink has entered the market and offers LEO satellite-based broadband connectivity throughout the country – though will likely have the biggest impact in Geographic Market 2 given the nature of the technology. FWA and 4G (and soon 5G) mobile wireless have and will provide further alternatives for consumers in the market. This makes for a highly dynamic competitive market, characterized by new entry and expansion of existing capacity (in terms of speed and reach).

Lastly, and as noted, the structure of the fixed market (including broadband, voice and video) is analogous to the mobile market in The Bahamas. There are two incumbent/primary operators in each case – i.e., CBL/Aliv and BTC. This incumbent duopoly market structure is common in many other countries, for instance the United States and Canada. One difference in the fixed market segment in The Bahamas, as well as other countries, is that there are a range of smaller OLOs offering either fixed wireline and/or FWA broadband alternatives using owned or leased (wholesale) network facilities. As well, new technologies such as LEO satellite-based services are now available. As in the case of the mobile market in The Bahamas and fixed markets in other countries, there is no reason to designate either CBL or BTC dominant.

BTC considers that the evidence clearly shows that there is no dominance or SMP concern in relation to standalone fixed broadband services at this stage of the development of the ECS in The Bahamas. Moreover, in BTC's view, it would be more appropriate to consider standalone fixed broadband services as an interrelated component of bundled fixed communications services given consumers' overwhelming preference for bundles over standalone services. In this regard, BTC

[18] PD, Figure 25, page 87.

considers that the evidence also clearly shows that there is no dominance or SMP in respect of fixed service bundles.

Question 5 – Market definition for Retail Pay TV services

Do you agree with URCA's proposed definition of the market for retail pay TV services in The Bahamas? If not, why?

BTC disagrees with URCA's proposed definition of the pay TV services market in The Bahamas – i.e., that it encompasses only legacy hybrid-fiber coax ("HFC") cable and direct-to-home ("DTH") satellite TV services.

Like fixed voice, cable and DTH pay TV are legacy services that have been experiencing steep declines in consumer demand for years. As shown in the PD, household penetration of pay TV services has dropped from 65% to 44% since 2017.[19] In BTC's opinion, the rise of online streaming services (both free and subscription-based) is the primary reason for the historical and ongoing erosion of legacy pay TV services. Mobile wireless services provide ready access to online streaming services and, with mobile penetration exceeding 100%, virtually all Bahamians has access to online streaming services. In addition, most households have a broadband connection (over 70%) implying that fixed broadband access to online streaming services is also widespread. Consequently, BTC disagrees with URCA's preliminary finding that online streaming services are not part of the same market as pay TV services.

The Customer Survey results are also instructive in this respect. When asked what respondents would do in when faced with a hypothetical SSNIP applied to standalone pay TV service, only 33% said they would "do nothing", whereas the vast majority – two thirds of respondents – indicated that they would respond negatively by dropping the service, downsizing as well as turn to online streaming services.[20] As noted in the PD, 77% of respondents use online streaming services, with the most popular being Netflix. This is clear demand-side evidence that online streaming services are in the same market as pay TV services.

BTC also disagrees with URCA's preliminary finding basis that IPTV is not in the same market as legacy pay TV (HFC and DTH). The premise for this finding is based on the fact that IPTV services are only offered as part of multi-product bundles offered by CBL and BTC. CBL is currently designated as dominant in the pay TV market. Consequently, under the existing Price Regulation Rules[21] it obligated to provide IPTV on a standalone, unbundled basis. Branding it as an "Aliv" rather than CBL product should exempt CBL from this obligation. BTC is not privy to the tariff application process followed for the introduction of CBL's AlivFibr bundles, however, the outcome of that process should have required the unbundling of CBL/Aliv's IPTV product. All to say, that IPTV is clearly in the same market as HFC and DTH pay TV services since it can readily be unbundled and, indeed, should have been unbundled pursuant to the Price Regulation Rules.

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19 PD, Figure 1, pages 22-23.

20 PD, page 119. Unlike in the case of standalone fixed voice and broadband services, full results for this Customer Survey question were inexplicably not included in the PD.

21 URCA, Regulation of Retail Prices for SMP Operators – Rules, ECS 06/2014, 16 April 2014.

In any event, as the Customer Survey results also indicate, close to 90% of consumers subscribe to multi-product bundles including pay TV.[22] Consequently, here as well, BTC submits that standalone pay TV services should be seen as falling within the market for bundled fixed services. Standalone and bundled fixed services are provided over the same network facilities and effectively offered in the same way as mobile services, consequently, there is equally no need or purpose to consider them as separate markets at this stage of the development of the ECS in The Bahamas.

Lastly, BTC agrees that the geographic market for pay TV services is national in scope, as should be the case for fixed services more generally.

Question 6 – Dominance Assessment in Retail Pay TV Service Market

Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail pay TV service market? If not, please set out your alternative views and provide evidence to substantiate your position.

BTC disagrees that with URCA's preliminary finding that CBL is dominant in the provision of pay TV services in The Bahamas.

The Customer Survey results demonstrate that the vast majority of customers – two thirds – would react negatively to a SSNIP in pay TV services. Increasing legacy pay TV prices would only serve to accelerate their ongoing decline and leading to even greater the use of online streaming services. A SSNIP applied to pay TV service would further accelerate disconnections of legacy pay TV services and, moreover, would very likely be unprofitable.

The competitive dynamics for video services have changed significantly since the 2014 Fixed Market Review with BTC's launch of IPTV services. And, as noted, there has been a proliferation of online streaming services that have proven to be extremely popular with consumers. Consequently, BTC submits that the evidence clearly shows that there is no dominance or SMP concerns in relation to standalone fixed pay TV services at this stage of the development of the ECS in The Bahamas. Moreover, in BTC's view, it would be more appropriate to consider standalone fixed pay TV services as an interrelated component of bundled fixed communications services given consumers' overwhelming preference for bundles over standalone services.

Question 7 – Market Definition for Retail Multi-Product Bundles including Pay TV

Do you agree with URCA's proposed definition of the market for multi-product bundles including pay TV service in The Bahamas? If not, why?

For the reasons provided in response to the previous Consultation Questions, BTC considers that the market definition for fixed communications services in the Bahamas at this stage of the development of the ECS in The Bahamas should include both standalone and bundled fixed communications services – i.e., voice, broadband and pay TV. In BTC's view, the Customer Survey

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22 PD, Figure 4, page 26.

results clearly show that, by far, consumers prefer bundled rather than standalone fixed services market. A similar preference exists in the mobile market. Therefore, BTC considers that a similar broad market definition approach should apply in the fixed and mobile markets in The Bahamas.

To the extent, URCA decides to carve out separate markets for standalone fixed service markets for regulatory purposes, contrary to BTC's position, then BTC submits the fixed multi-product bundle market should include all combinations of two and three-paly fixed services, including those consisting of fixed voice and broadband services. There is no logical reason to carve out bundles consisting of broadband and voice services, as discussed in response to Consultation Question 3.

Otherwise, BTC agrees that the geographic market for bundled fixed services is national in scope, as should be the case for fixed services more generally.

Question 8 – Dominance Assessment in Retail Multi-Product Bundles including Pay TV

Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail multi-product bundles including pay TV service market? If not, please set out your alternative views and provide evidence to substantiate your position.

For the reasons provided in response to the previous Consultation Questions, BTC does not agree that either BTC or CBL is dominant or possesses SMP in the markets for either standalone or bundled fixed communications services at this stage of the development of the ECS in the Bahamas.

Question 9 – Proposed SMP remedies for Retail Fixed Telephony Services

Do you agree with URCA's proposed SMP remedies for retail fixed telephony services? If not, why?

As explained above, BTC submits that standalone fixed voice services do not comprise a separate market of their own, but rather should be considered as part of the broader market for standalone and bundled fixed services. Within that broader market no service provider is dominant and, therefore, no *ex-ante* price regulations are necessary or justified.

If URCA nonetheless insists on defining standalone voice services as a separate market for regulatory purposes, then it should include both fixed and mobile wireless voice access and calling, since mobile is unquestionably a substitute for fixed voice services. In this case as well, no service provider is dominant and, therefore, no *ex-ante* price regulations are necessary or justified in the case of standalone voice services.

Either way, there are no material competition concerns identified in the PD relating to fixed voice services (e.g., excessive pricing, predation, margin squeeze, discrimination or lock-in). BTC considers that *ex-post* competition law is the appropriate tool to use in the fixed market at this stage of the development of the ECS in The Bahamas, as in the case of mobile voice services, in particular, and the mobile market more generally. Other potential consumer harm concerns such as undue discrimination or customer lock-in can readily be addressed through the CPR.

Otherwise, the only other fixed voice service concern noted by URCA relates to affordability. However, affordability is not a competition issue but rather a social policy or USO matter, and one which could equally apply to any communications service – fixed or wireless technology. In BTC's view, affordability is a matter that would be better addressed in URCA's planned review of the USO framework, not in the context of a fixed market review.

If URCA nonetheless decides to apply a price cap to basic fixed voice services, then it should only apply to residential basic fixed voice service, and not to business basic fixed voice service as contemplated in the PD. There is no affordability issue relating to business basic fixed voice service, and none is identified in the PD.

As well, the mechanics of the proposed inflation-based price cap are not explained in the PD other than to note that the price of standalone basic fixed voice service would be permitted to increase by the rate of inflation in any given year, up to a maximum of 5% (i.e., in the case where inflation exceeded that threshold). If implemented, BTC suggests that the rate of inflation used in the proposed Price Cap Index ("PCI") should be the previous year's All Items Consumer Price Index ("CPI") as calculated by the Government of The Bahamas, Department of Statistics. In addition, the PCI should incorporate the carryover of any unused headroom from one price cap year to the next.[23] Lastly the term of the price cap regime should be no longer than 4 years (which is typical for such regimes). An automatic review of its continued need should be conducted at that time. BTC suggests that these same price cap mechanics apply to any price cap mechanism implemented as a result of this consultation – i.e., as necessary for standalone fixed voice, broadband and/or pay TV servcies.

BTC is otherwise not opposed to the continuation of its existing obligation to offer standalone fixed voice services to residential and business customers.

Question 10 – Proposed SMP remedies for Retail Fixed Broadband Services

Do you agree with URCA's proposed SMP remedies for retail fixed broadband services? If not, why?

For the reasons provided in response to Consultation Questions 3 and 4, BTC is of the view that *ex-ante* regulation of standalone broadband prices is not necessary or justified. No material competition or consumer harm concerns are identified in the PD relating to fixed broadband services. BTC considers that *ex-post* competition law is the appropriate tool to use in the fixed market at this stage of the development of the ECS in The Bahamas, as in the case of mobile data services, in particular, and the mobile market more generally. As well, any other potential

[23] For example, if in year 1 of the price cap regime, the price cap is 2.5% (i.e., the previous year's CPI was 2.5%), but no increase in the price if fixed voice service is implemented, then the unused headroom of 2.5% would carry forward to the second year of the regime. If the CPI was 3.0% in year 1 of the price cap regime, then the price cap would increase to 5.5% for year 2. However, the 5% maximum increase limit in any given year, would restrict any price increase implemented in year 2 to 5%.

consumer harm concerns such as undue discrimination or customer lock-in can readily be addressed through the CPR. If standalone basic broadband affordability is a material concern, then that should be addressed in the upcoming USO framework review.

If URCA nonetheless decides to apply price caps to standalone basic fixed broadband services, BTC considers the proposal in the PD in this respect to flawed, unfair and discriminatory.

In the PD, URCA proposes to apply two price caps to standalone basic or "entry-level" broadband services – the first to CBL in Geographic Market 1 (which covers 95% of the population of the Bahamas) and the second to BTC in Geographic Market 2 (which covers the balance or 5% of the population). In addition, URCA proposes to also apply a national uniform pricing obligation on BTC, but not on CBL. This proposal is inconsistent with standard price cap regulation practice, and is also discriminatory and unfair to BTC for the following reasons:

- With the national uniform pricing obligation placed on BTC, BTC is effectively subject to a price cap on its standalone basic broadband services in both Geographic Markets 1 and 2. Price caps are normally intended to apply to a single dominant service provider, not non-dominant service providers as well. Yet under URCA's proposal, both CBL's and BTC's standalone basic broadband services would be price capped in Geographic Market 1, where only CBL is deemed dominant in the PD. This aspect of URCA's proposal is inconsistent with standard price cap regulation practice.
- In addition, as shown in the PD, the current prices of BTC's standalone basic broadband services are lower than those of CBL's,[24] consequently, URCA's price cap proposal would have the effect of locking in this price differential for the life of the price cap regime, if not forcing it grow, since CBL would have greater price cap headroom than BTC by the virtue of the fact CBL's going-in prices are higher than BTC's. This would be unfair to and discriminate against BTC.
- Further, it is proposed that BTC be subject to a national uniform pricing obligation, while CBL would not. This means that CBL could charge different prices in different locations within Geographic Market 1 (e.g., New Providence vs Grand Bahama), while BTC would be restricted to a single nationwide pricing obligation. This would place BTC at a significant competitive disadvantage, leaving it vulnerable to targeted pricing initiatives by CBL. This aspect of URCA's proposal would also be unfair to and discriminate against BTC.

Consequently, if URCA considers *ex-ante* price regulation of standalone basic broadband service is required, contrary to BTC's position, then the price cap proposal should be substantially revised as follows:

- A price cap should only apply to CBL's standalone residential basic (entry-level) broadband services (i.e., CBL's RevNet Prime 30 Mbps);
- A national uniform pricing obligation should apply equally to both CBL and BTC.

[24] PD, Table 16, page 105.

As explained, there is no justification for applying an additional price cap to BTC, since the national uniform pricing obligation makes one redundant and, more importantly, it would be inconsistent to standard price cap regulation practice as well as unfair and discriminatory.

Further, there is no need or justification for defining separate technology-based categories of entry-level broadband services –e.g., legacy HFC versus fiber. All that is relevant is the speed of the service designated as "basic" or "entry-level" for price cap purposes, not the technology used to deliver it.[25] In addition, there is also no need or justification for a price cap in the case of standalone basic broadband service for small business. There are no competition or consumer harm concerns in this market segment that requires *ex-ante* price regulation, and none were raised in the PD.

BTC is otherwise not opposed to the continuation of the existing obligation to offer standalone fixed voice services to residential and business customers. In addition, if no price caps are applied to standalone basic fixed broadband service – consistent with BTC's position – then, a national uniform pricing obligation could still be applied equally to CBL and BTC to account the differences in network footprint.

Question 11 – Proposed SMP remedies for Retail Pay TV Services

Do you agree with URCA's proposed SMP remedies for retail pay TV services? If not, why?

For the reasons provided in response to Consultation Question 5, BTC considers that the market definition for pay TV services proposed by URCA in the PD is incorrect. It should clearly include online streaming services, which are the primary reason for the steady decline in the legacy pay TV services over the last decade or more. Consequently, BTC is of the view that *ex-ante* regulation of standalone pay TV prices in The Bahamas is not necessary or justified. No material competition or consumer harm concerns exist in the market. BTC considers that *ex-post* competition law is the appropriate tool to use in the fixed market at this stage of the development of the ECS in The Bahamas, as in the case mobile market. As well, any other potential consumer harm concerns such as undue discrimination or customer lock-in can readily be addressed through the CPR.

If URCA nonetheless decides that a price cap should apply to standalone basic fixed pay TV service, then it need only apply to CBL's Prime Local pay TV service. There is no need or justification for capping additional pay TV products based on technology or pay TV services for business customers, since no material competition or consumer harms concerns were identified or exist for such services.

Question 12 – Proposed SMP remedies for Multi-Product Bundles

Do you agree with URCA's proposal not to impose specific SMP remedies on CBL for multi-product bundles? If not, why?

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25 If URCA nonetheless decides to also price cap CBL's basic fiber broadband services, then CBL's RevNet Prime Fibre 50 Mbps service be defined as entry-level fiber and, therefore, subject to price cap.

BTC agrees that there is no need or reason to impose *ex-ante* price regulation on bundled fixed services. As discussed above, BTC believes that this approach is appropriate in the case of all fixed services, bundled and standalone, as in the case of the mobile market. At this stage on the development of the ECS market in the Bahamas, it is time for URCA to rely on *ex-post* competition law together with the CPR to protect the interests of consumers.

Question 13 – Proposed Non-Market Specific SMP Remedies

Do you agree with URCA's proposed non-market specific SMP? If not, why?

BTC is not opposed to the continuation of the existing Accounting Separation ("AS") obligation. However, BTC also considers that this fixed market review provides an opportunity to reassess the level detail included BTC's AS model with regard to fixed services with a view to further simplifying it as was the case following the mobile market review. The AS obligation involves significant cost and resources. Every effort should be made to ensure it remains fit-for-purpose, while also minimizing regulatory burden.

BTC considers the notification requirements proposed in the PD to be excessive. To the extent price caps are imposed on standalone basic fixed voice, broadband and/or pay TV services as a result of this proceeding – contrary to BTC's position – then clearly notice of any price changes to these specific services would need to be filed with URCA to demonstrate that the changes comply with the applicable price cap constraint. This should and normally would be the only information necessary for URCA to monitor compliance with the price cap regime proposed in the PD. Filing notices for each and every fixed service amendment, introduction or withdrawal for non-price-capped standalone or bundled fixed services is an excessive regulatory burden with no clear purpose or benefit. It is not the norm with standard price cap regulation practice. No such an obligation exists for mobile services. Consequently, BTC considers that such an obligation is unnecessary and unjustified for non-price capped standalone or bundled fixed services.

URCA also proposes in the PD that operators publish all currently available retail fixed service prices on their websites in a clear and transparent manner. This obligation already exists in the CPR. There is no need or reason to create new publication rules – assuming that is the intent in the PD – in the context of this fixed market review.

4. CONCLUDING REMARKS

In BTC's submission, the structure and competitive dynamics of the fixed services market shows has evolved significantly since 2014 when URCA last conducted a fixed market review. Consumers have access to a wide array of competitive voice, broadband and video services today through a variety of technologies – wireline (copper, HFC and fiber), FWA, mobile wireless, and LEO satellite. Like the mobile market, consumers mostly subscribe to bundled fixed services – which account for close to 90% of the fixed services market. Also, like the mobile market, there is no longer a need for *ex-ante* price regulation of fixed services. *Ex-post* competition law together with the CPR provide sufficient tools to protect the interests of consumers at this stage of the development of the ECS in The Bahamas. URCA has already concluded as much in respect of bundled fixed services. BTC submits that the same approach should equally apply to standalone voice, broadband and pay TV services.

To the extent that URCA nonetheless decides to impose price caps on standalone basic fixed services, contrary to BTC's position, then the proposed measures for standalone broadband should be revised so that only CBL's standalone entry-level broadband service is price capped and that a national uniform pricing obligation apply equally to both CBL and BTC.

In addition, if URCA also decides to price cap standalone fixed voice and pay TV services for what effectively amounts to affordability rather than competition concern reasons, then BTC submits that any such constraints and related obligations should be addressed in the context of the forthcoming USO consultation rather than this market review process. The is no competition concerns relating to fixed voice and pay TV services that require or justify *ex-ante* price regulation at this stage of the development of the ECS in The Bahamas.