



**Bahamas Telecommunications Company Limited**

**COMMENTS ON**

**URCA's Three Year Strategy &  
Annual Plan for 2011**

**ECS 26/2010**

January 20, 2011

## ***Table of Contents***

<b>Executive Summary.....</b>	<b>3</b>
<b>Introduction to Report.....</b>	<b>5</b>
<b>URCA’s vision &amp; Values.....</b>	<b>6</b>
<b>URCA’s Strategy &amp; Priorities 2009 – 2012.....</b>	<b>8</b>
<b>URCA’s Achievements in 2010 &amp; Plan Activities for 2011.....</b>	<b>10</b>
<b>URCA’s Effectiveness.....</b>	<b>11</b>
<b>URCA’s Budget.....</b>	<b>11</b>
<b>Fee Schedule 2011.....</b>	<b>12</b>
<b>Conclusion.....</b>	<b>13</b>
<b>Saving Provision.....</b>	<b>13</b>

### **Executive Summary**

The Bahamas Telecommunications Company Limited (“BTC” or the “Company”) again welcomes the opportunity to comment on the Public Consultation on URCA’s Three Year Strategy & Annual Plan<sup>1</sup> for 2011 issued on December 10, 2010 together with the Fee Schedule 2011<sup>2</sup> as mandated under Section 41.2 of the Utilities Regulations and Competition Authority Act (“URCA Act”).

Taking into account the provisions of Section 41.7<sup>3</sup> of the URCA Act, BTC looks forward to having an opportunity to also raise issues in a public hearing regarding URCA’s Strategy & Annual Plan further to URCA’s responses to the submissions on this consultation.

BTC is disappointed with some of the elements of URCA’s Three Year Strategy & Annual Plan. In particular URCA’s budget which has increased by \$500,000,000 makes it appear that URCA is ‘cutting its suit to fit its budget’ rather than demonstrating efficiencies. Additionally, BTC is of the view that URCA continues to give minimal acknowledgement to the principle set out in Objective 24 of the Electronic Communications Sector (ECS) Policy<sup>4</sup>.

BTC holds fast to the view that the Communications Licence Fee of 3% of the relevant turnover is onerous when compared to other jurisdictions, particularly given the initial mandate to pay the total fee amount up-front and firmly disallowing installments as previously facilitated by their predecessor, the PUC with the franchise fee paid by BTC’s predecessor. Additionally, the statutory interest under Section 94 of the Communications Act specifies a surcharge of 4% over the prime lending rate for a

---

<sup>1</sup> ECS 26/2010

<sup>2</sup> ECS 27/2010

<sup>3</sup> Section 41.7 URCA Act: “URCA shall arrange at least one oral hearing during which the annual plan and report shall be presented and questions from interested third parties answered.”

<sup>4</sup> Objective 24 ECS Policy: URCA should, where consistent with the core objectives, apply a light touch regulatory approach to the electronic communications sector and not unduly restrict market entry, nor the commercial freedom of communication providers.

delinquent/late payment, and is equally as onerous. BTC is being mandated to pay based on the previous year(s) profitability/earnings with a true up on completing of financial statements thereby committing to an uncertain amount which going forward and as competition increases could be even less certain.

In this response to URCA's Three Year Strategy & Annual Plan, BTC makes a number of recommendations that should be considered by URCA, including the further review of URCA's vision and mission statements, improved enforcement, Universal Service Obligations by Cable Bahamas Limited, strategies to encourage broader participation by the public in URCA's affairs for incorporation into the Final Plan scheduled to be published by the end of April 2011.

## **Introduction To Report**

In the introduction to the Report, URCA indicates its intention to implement a series of key performance indicators which will be used to measure the Company's performance during fiscal 2011. BTC is concerned with the effectiveness and independence of such a system and queries whether there will be sufficient accuracy and impartiality in these performance results if URCA is to evaluate itself.

BTC again recommends, as it did in the 2009 Public Consultation on URCA's Annual Plan, allowing the service providers to be involved in any evaluation of URCA's performance, particularly with respect to the objective in section 24 of the Electronic Communications Sector (ECS) Policy, with respect to URCA not unduly restricting the commercial freedom of communications providers and applying a light touch regulatory approach to the Electronic Communications Sector. BTC also wishes to remind URCA of Objective 9 of the Sector Policy in relation to their token acknowledgement to abide by the principle of ***"light touch regulation"***:

*"The electronic communications sector is characterized by the need for substantial investment in infrastructure to establish and deliver services to individual and commercial users. To ensure a continued incentive for electronic communications providers (present and future) to invest in up-to-date and innovative services and infrastructures, it is critical that the overall policy and regulatory framework governing the sector is set out clearly and **that it strikes the right balance between regulatory oversight and commercial freedom.**"*

In estimating the size of the market at \$460 million, BTC is uncertain as to whether URCA took into account the wide spread use of non-regulated services in The Bahamian market including (i) Vonage, (ii) Skype, (iii) Magic Jack, and other illegal operators in URCA's computation and/or results.

On page 4 of the Report<sup>5</sup>, URCA compares The Bahamas to other countries with fixed-line services and states *“The Bahamas, therefore, compares favorably with most countries in the sample....”* BTC recommends that such comparisons and statements not be made without a footnote stating that the Bahamas is an archipelagic nation of 700 islands and cays and as such, duplication of services is a requirement as it relates to network and/or technological deployment as compared to other jurisdictions which are, for the most part, single land mass areas.

In a sector characterized by excessively high licence fees, BTC maintains its position as stated in its 2010 budget submission<sup>6</sup> and is very concerned that URCA has included in its 2011 Report provisions whereby telecoms licensees are paying the cost of training for other utilities’ “possible” regulation. This is unfair given the anticipated start up costs of the newly appointed Appeals Tribunal which are yet to be determined and the depressed economic climate. This subsidization by communication licensees of other utility regulation preparation is unwelcomed and vehemently opposed by BTC. Again, URCA appears to be existing in a “bubble” oblivious to the economic realities of the Bahamian market and working through a “wish list” of items.

### **URCA’s Vision & Values**

BTC takes note that in outlining the vision statement, URCA has duplicated a number of elements of the principles of the Electronic Communications Sector Policy<sup>7</sup> however noticeably absent from URCA’s vision statement is the fundamental principle outlined in Objective 24 of the Sector Policy relative to “light touch regulation”. BTC recommends that URCA’s Vision Statement be amended to reflect the elements of the objective in Section 24 of the Sector Policy.

---

<sup>5</sup> A comparison of penetration rates for The Bahamas and a selection of countries is provided in Figure 2.

<sup>6</sup> Dated February 12, 2010

<sup>7</sup> Published by the Government of the Bahamas and dated October 7, 2009

In reviewing URCA's Mission Statement, BTC is of the opinion that a more balanced and keen objective should be pursued by URCA with regard to benefactors of the market (i.e. the service provider and customer).

URCA's mission statement implies a number of principles and in particular, the bullet-point regarding the reliance on market forces where possible while in the absence of effective competition, regulation will seek to simulate the effects of competition. BTC is unaware of any threshold and/or variables outlined by URCA to be used as a benchmark to determine when market forces are to be in effect. BTC is of the view that if no such thresholds and or benchmarks have been established, URCA should refrain from making inaccurate statements.

It is the consensus/opinion of all international advisors/experts that BTC is overly regulated in the extreme particularly in its price regulated rules and that URCA is overbearing in its preferred application of Section 8.1 (h) of the Comms Act 2009 which, given URCA's reliance on section 8.1(h)<sup>8</sup> will ultimately be challenged by operators as to the limits and restrictions that must be applied to the Section, inclusive of URCA's invasive approach to an operator's confidential information. Additionally, the rigid rules imposed by URCA on BTC, can effectively hinder innovation with regard to the execution of marketing strategies and the promotion of products and services, hence disadvantaging the consumer, which URCA is mandated to protect, as highlighted in Objective 12(f) of the Sector Policy<sup>9</sup>.

In defining a customer, BTC is concerned as to whether URCA considered that service providers can also be customers. The definition of customers by URCA should be reflective of these components. In an effort to effectively and efficiently administer and

---

<sup>8</sup> Section 8.1(h) Comms Act: "for the purpose of enforcing compliance with this Act, institute prosecutions in accordance with the terms of this Act or any other law"

<sup>9</sup> To encourage the development of public electronic communications services which are responsive to the requirements of users (both individuals and businesses) and which provide its users with choice, innovation, efficiency, quality and affordability.

regulate the sector all variations of the consumer experience should be incorporated into URCA's Value(s) system.

### **URCA's Strategy & Priorities 2009 – 2012**

BTC notes that URCA has planned, in Q2, for a public consultation on Universal Service Obligations. BTC is uncertain as to URCA's willingness and effectiveness to address Universal Service Obligations (USO) in the communications sector which has two (2) designated SMP USO service operators, namely BTC and CBL, given the fact that Bahamian consumers have made repeated public calls and claims that CBL has not fully complied with its mandate related to USO which was first introduced in CBL's 1994 – 2009 exclusive franchise agreement which created a monopoly in Cable Television.

It is also noted that the policy recommendations for the Minister have not yet been shared with the licensee/operators. BTC urges URCA to take into account the USO obligations it has been fulfilling without benefit of a contributory fund by OLOs and the need to ensure that CBL who has enjoyed a fifteen year monopoly in Cable television and who has had high speed internet dominance for the past ten years more or less is required similarly to participate in, and fulfill USO obligations.

BTC is of the view that to effectively regulate the electronic communications sector, it is imperative that URCA not obscure its vision with respect to the existing SMP's within the market and pursue a balanced approach utilizing an Efficiency Study of the other SMP with USO Obligations. BTC is of the opinion that CBL can certainly optimize the level of its quality of service delivered to its customer base.

BTC applauds URCA's stated intentions to promote consumer protection and education and is appreciative, for the most part, of the tone and content of the public announcements that have been aired. In order to expand URCA's efforts in relation to consumer education, BTC recommends that URCA consider establishing strategic alliances with local institutions such as the College of The Bahamas, the Church, and



other civic organizations to educate consumers while at the same time widening the audience to increase the possible responses to public consultations, particularly on issues such as content regulation an area which has newly emerged as a result of liberalization. Of concern to BTC is the inadequate basic knowledge of the regulation of the telecommunications sector by new business entrants. Whilst BTC is not suggesting that URCA put on “Licencees 101 seminars” some basic assistance in pointing new licencees in the right direction to ensure regulatory compliance would benefit the sector.

In relation to the promotion of competition and in particular the issue of URCA implementing regulations which afford operators the ability to earn a reasonable rate of return on their investment, BTC contends that URCA continues to ignore the principle of light touch regulation as mandated in Section 24 of the Sector Policy. Section 5<sup>10</sup> of the Communications Act 2009 obligates URCA to comply with the Sector Policy in relation to implementing regulation to promote competition and URCA appears to have overlooked this principle in their three year strategy. BTC recommends that URCA review their priorities for the period in question with the view to including the principle of light touch regulation as mandated by the Sector Policy.

In relation to institutional capacity building and taking into account the influx of external expertise into URCA, BTC urges URCA to ensure that there is a commitment to knowledge transfer and up skilling of local employees and that recruitment of local talent who can be trained to be a part of the regulator’s office is also incorporated into URCA’s Institutional Capacity Building. These commitments have implications for reducing staff costs and URCA’s budget. Additionally, BTC is of the view that the importation of expertise to URCA’s staff should be reflected in a decrease in budgetary spending on External Advisors.

Within the institution of URCA there exists a wide cadre of disciplines and/or human resource elements essential to fostering regulatory competency and efficiency within the

---

<sup>10</sup> Guidelines for Regulation and Government Measurers

communications sector. URCA is primarily a technologically driven body however, in reviewing the layout of Institutional Capacity Building and HR Strategy, and from a sector observation perspective, there appears to be a critical imbalance and/or deficiency, at the present time, with regard to the technological expertise essential to adequately and effectively address the regulatory mandates of the sector. It is imperative that URCA expeditiously address the said deficiency, to ensure the fluidity and efficient functionality of the communications sector.

### **URCA's Achievements in 2010 & Planned Activities for 2011**

In reviewing URCA's achievements for 2010, BTC acknowledges that URCA undertook and completed a number of key initiatives, however, a number of planned activities were not completed as stated in the 2009 Annual Plan. BTC notes the listing of the anti-competitive claims which URCA has investigated re SRG and BTC which total five, three of which URCA points out have been concluded. BTC queries why URCA might not have reported, briefly on the conclusions.

In reviewing the planned activities of URCA for 2011, BTC notes, as was the case in 2010 that thirteen (13) items are planned for in Q1 and Q2 which includes, the overly ambitious, ten (10) public consultations. BTC again expresses its concern with the compacting of this work in the first half of the year. BTC is of the opinion that the demands surrounding the consultations and the responses including the cost associated with external advisors make it extremely unfair and burdensome to OLOs who must also operate going concerns in an efficient and profitable manner. BTC further contends that URCA has only the sole function of regulating and must be mindful not to impose undue burdensome tasks on licencees particularly given the fact that the sector has undergone immediate liberalization, rather than a phased liberalization.

BTC takes note of URCA's acknowledgement regarding the Other Regulatory Projects and Activities planned for 2011 in that a number of factors could impinge on the work programme although nothing specific has been stated.

## **URCA's Effectiveness**

BTC holds fast to its position that any meaningful and accurate evaluation of URCA can only be performed objectively by either the sector or an independent body not pre-selected by URCA. We again ask the question can URCA objectively evaluate itself without the potential for subjective variables being factored in? BTC is of the opinion that any institution which evaluates itself would be inclined to be subjective and hence the customers and service operators would not be benefactors of the process and the process would have little value.

## **URCA's Budget**

BTC is extremely disappointed with URCA's budget for the 2011 period which has increased by \$500,000,000. Notwithstanding the previous concerns stated by BTC regarding the increase in budgetary allocations, BTC notes the following:

- A small proportion of URCA's operating budget is allocated to conferences and training workshops. In 2011, URCA has proposed a total allocation of \$291,000 for training including travel costs. This represents 5.5% of URCA's total operating expenditure of \$5.3 million, thus although URCA has indicated its intention of up skilling its staff it has increased its training allocation by less than \$47,000 for 2011.
- The amount allocated for compensation to Executives (i.e. Post of Director of Policy and Regulation and Chief Executive Officer (CEO) is one and one half times the total amount allocated to training.
- The \$300,000.00 increase in staff costs for 2011 over 2010, considering that URCA has only recruited two additional staff members is greater than the total allocated to training unless URCA intends to employ new staff.
- Revenues in 2008 were less than those in 2007 and only slightly higher (3% according to URCA's estimates based on licensee information) in 2009 indicating

a leveling off. At the same time in 2009 licensees were attacked by the excessive licence fees imposed by URCA, which URCA continues to ignore, to justify as the rationale for the percentages imposed on licensees.

### **Fee Schedule 2011**

URCA's Annual Communications and Licence Fee Schedule effectively mandates that each licensed operator pay two (2) licence fees for one (1) operating licence. BTC, as stated in the 2010 Plan submission maintains that these fees are excessive particularly as URCA has never (and has stated that it has no statutory obligation to do so) provided the basis on which the 1.1% licence has been determined.

The onerous communications fee of 3% must be paid by April 1<sup>st</sup> of each year and there is no provision for installment payments. Equally onerous is the provision for the payment of statutory interest under section 94 of the Communications Act which attracts a surcharge of 4% above prime lending rate for delinquent late payments.

BTC has several concerns relating to Premium Spectrum and would recommend that URCA review the fee schedule with the view to addressing these concerns:

- The absence of criteria which are used to determine categorization of frequency spectrum into its premium and standard levels.
- How the service provider and indeed the customers should be protected from an impromptu re-classification of standard spectrum bands, to their economic disadvantage.

### **Conclusion**

It is expected, of course, that over a period of time URCA will refine and improve its Annual Plan and Strategy having considered sector input. BTC would wish for URCA to continue to demonstrate that it values sector input and the participation of the public in general in regulatory affairs. To this end, as recommended by BTC, a focus on consumer education as well as new licencees' education could greater benefit the sector and assist ultimately in a more efficient delivery of services to the public.

BTC will continue to agitate URCA for a more equitable calculation of license fees so that individual operating licensees will not be unduly burden, and will also continue to lobby for light touch regulation that will not hamper the commercial freedom of BTC.

### **Saving Provision**

BTC has addressed the issues but reserves the right to comment at any time on all issues and states categorically that the decision not to respond to any issue raised in this Consultation in whole or in part does not necessarily represent agreement in whole or in part with URCA's position, nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.