



Guidelines for developing Licensee Consumer Complaints Handling Procedures

Statement of Results and Final Determination

ECS 16/2012

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UTILITIES REGULATION & COMPETITION AUTHORITY

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1. Introduction

The Utilities Regulation and Competition Authority (URCA) is the independent regulator and competition authority for the electronic communications sector (ECS) in The Bahamas, with responsibilities across telecommunications, wireless communications services and television and radio broadcast. One of URCA's primary functions under the Communications Act, 2009 (Comms Act) is to further the interests of consumers¹. This function underpins all aspects of URCA's activities and drives its work to promote and deliver competition, investment and consumer choice in the market place. Therefore, as the sector regulator with a specific duty to further the interests of consumers, URCA pays particular attention to consumer complaints in order to inform regulatory measures and decisions.

URCA thanks all those who responded in writing to the Public Consultation document on the *"Guidelines for Developing Licensee Consumer Complaints Handling Procedures"* – ECS 23/2011 ("the Consultation Document") issued by URCA on December 23, 2011. URCA is especially thankful to the respondents for the level of discussion on the issues as well as the suggestions and recommendations proffered.

This Statement of Results and Final Determination now provide guidance for the development and implementation of procedures for the handling of consumer complaints ("Complaints Procedures") by service providers in the ECS in The Bahamas. URCA therefore re-emphasises the need for service providers, subject to this consultation process, to deliver swift action regarding the development and implementation of Complaints Procedures.

URCA's Final Determination leaves unchanged any consumer rights or remedies that exist under consumer protection or any other related laws in The Bahamas.

2. Purpose of this Statement of Results and Final Determination

- (i) To summarise the written submissions received in response to the Public Consultation document;
- (ii) To provide URCA's analysis of and comments on the submissions received in response to the Public Consultation document;
- (iii) To provide URCA's Final Determination and its reasoning; and
- (iv) To set out the finalised text of the minimum criteria to be incorporated by Licensees in developing and implementing Consumer Complaints Handling Procedures.

¹ See particularly section 4 of the Communications Act, 2009

3. Overview and General Comments

URCA issued its Consultation Document on December 23, 2011. This provided the formal means through which members of the public, licensees and interested parties were able to make written submissions on the subject matter contained therein. The period for submission of responses closed on February 10, 2012 and URCA is now pleased to publish a summary of such responses to the Consultation Document, its analysis of and comments on the responses, and its Final Determination. The full text of the responses received to the consultation can be found on the URCA website at www.urbahamas.bs under the 'publication' tab.

URCA understands the importance of an open and transparent consultation process and is therefore satisfied that it has complied with its statutory duty under the Communications Act, 2009 (Comms Act) by affording all persons having interest in the subject matter of the Consultation Document a reasonable opportunity to make submissions.

The subject matter of the Consultation Document will impact approximately thirty (30) sector licensees as well as all consumers of electronic communications services in The Bahamas. As such, the level of participation in this consultation process was significantly below what URCA had anticipated. URCA's high level overview of the submissions by the respondents is that they were generally constructive, insightful and useful. Those who provided written responses to the Consultation Document are listed below:

- (i) Bahamas Telecommunications Company Limited (BTC);
- (ii) Cable Bahamas Ltd. [also responding on behalf of its affiliates] (CBL); and
- (iii) Linda Thomas (LT) – a private individual.

Respondents' General Comments

The following summarizes the general comments, not specific to any consultation question, submitted by the respondents:

BTC welcomed the opportunity to respond to the public consultation on the "Guidelines for developing Licensee Complaints Handling Procedures". It generally supports the aim of the public consultation to provide practical guidance for licensees as this will benefit both licensees and consumers. BTC commented that URCA's policy aims and principles, as outlined in the Consultation Document are consistent with those under the European Union regulatory framework.

BTC stated its commitment to compliance with all provisions of the Comms Act and its licence, recognizing and acknowledging that it is also governed by and has responsibility to its customers under the Consumer Protection Act. BTC supports URCA's efforts to ensure that the public interest is served by access to simple and inexpensive complaints handling processes so that consumers may derive the maxim benefit. BTC also supports the aim of a complaints policy which seeks to empower consumers to take direct action regarding poor service provision, quality or other issues.

BTC enthusiastically embraces the objectives of the URCA consultation to speedily and fairly resolve customer queries. BTC recognizes that the reporting of consumer complaints is a good measure of the quality of its services and creates an environment in which competition can flourish.

Notwithstanding the foregoing general comments submitted by BTC, it contends that the Guidelines should not be overly prescriptive, in keeping with the principle of light touch regulation, so as to allow operators the freedom to establish creative solutions for the handling of consumer complaints. BTC believes that it is in the interest of the operator to have satisfied customers and an efficient complaints process that can ensure important objectives.

CBL conditionally supports URCA's issuance of minimum (general) criteria for consumer complaints handling by licensees. CBL is also of the view that URCA should adopt a light touch, non-prescriptive approach to its Guidelines in order to allow licensees to be innovative in making customer service a competitive differentiator. CBL however emphasises that URCA should remain within its statutory ambit when establishing standardized minimum criteria for the handling of consumer complaints by licensees.

CBL has also expressed certain reservations and exceptions to URCA issuing Guidelines for licensees to develop consumer complaints handling procedures. It is CBL's position that licensees would have benefited from access to analytical data and information (presumably provided by URCA) to illustrate the need for the consultation at this time. CBL makes the point that URCA may have been minded to publish this consultation to ensure consumers have access to effective complaints procedures. However, CBL has argued that licensees who provide a suite of services may feel disadvantaged by this process as no indication has been given by URCA of what segment of such licensees product offerings or services are satisfactorily (or not) meeting consumer needs. CBL submits that in the absence of such indication by URCA, licensees are left to assume their entire suite of services require the same level of upgrade and focus.

CBL reasons that URCA may have been influenced by international occurrences as there is no empirical evidence to suggest an industry wide problem thereby warranting regulatory intervention at this stage. CBL suggests that URCA should consider the size of the Bahamian market and whether the cost is warranted by imposing the development and implementation of complaints procedures on smaller companies. CBL believes that URCA should have focused on "*problem*" licensees. However, while CBL has described many of its "*accolades*" regarding customer service and care, it states that there is always room for improvement.

LT has submitted comments within the context of being a consumer and her overall experiences as a customer of some of the major electronic communications providers in The Bahamas. LT believes that it is important for the service provider to provide follow-up information to the consumer regarding a complaint. LT submits that once a consumer complaint has been lodged, the service provider should be proactive in following through with resolving the complaint to the satisfaction of the consumer.

URCA's General Comments

In response to the common concern expressed by BTC and CBL regarding URCA's overall approach to the issuance of the Guidelines, URCA assures both BTC and CBL that in line with URCA's "light touch" approach to regulation (i.e. adopting the least intrusive possible means of achieving the policy objectives of the Comms Act by regulatory intervention only where necessary), URCA will have due regard to pragmatism and proportionality. URCA's position as articulated in the Consultation Document² "*not to be overly prescriptive in proposing how service providers are expected to engage with consumers regarding the handling of complaints*" will therefore be pragmatic and proportional when introducing regulatory and other measures to guide licensees in the development and implementation of procedures for the handling of consumer complaints.

URCA recognises that customer service levels can be important to licensees distinguishing and differentiating themselves when competing for customers. While competitive pressures may incentivise the development of complaints handling by licensees, there could be cogent reasons why such pressures may not ensure effective levels of complaints handling by all relevant licensees. For example, licensees may be aware that consumers themselves may not take complaint handling sufficiently into account when deciding from which licensee to take service (as licensees' complaints handling records are not readily available/known to the consumer). Additionally, some licensees may consider developing and implementing robust complaints handling procedures as costly and consequently decide not to commit the necessary resources to it. Therefore, it is URCA's position that competitive pressures alone may not be sufficient to ensure adequate safeguards for consumers when they have a complaint against the licensee.

URCA now addresses the specific concerns raised by CBL that URCA should have focused on "*problem*" licensees and consider whether the cost is warranted by imposing the development and implementation of complaints procedures on "*smaller companies*". URCA is mindful of its statutory duty to ensure that regulatory and other measures are proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory³. As such, URCA may offend its statutory obligation if it focuses exclusively on any category of licensees, "*problem*" or otherwise, for the development and implementation of complaints procedures. The instant Guidelines are therefore meant to have general application to all relevant licensees in the sector as a whole.

It may have been useful for CBL to provide its full reasoning on the issue of the cost to smaller companies consequential to URCA "*imposing*" the development and implementation of complaints procedures on such companies. Of particular concern to URCA is whether the potential cost could vitiate the need for such companies to fulfil their licence condition obligation to establish procedures for the handling of consumer complaints. URCA is mindful that licensees operating under an Individual Operating Licence or a Class Operating Licence Requiring Registration must as soon as practicable and in any event within six (6) months after

² See Section 1.2 @ p. 5 of the Consultation Document

³ See sections 8(1) and 5(c) of the URCA and Comms Acts, respectively.

being issued such licence establish and thereafter maintain such procedures. URCA therefore believes that, as opposed to invoking its enforcement powers against licensees for failure to comply, this consultation process will also assist licensees in fulfilling their licence condition obligation.

It is URCA's position that the benefits to "*smaller companies*" in developing and implementing Complaints Procedures should outweigh the potential cost to such companies. URCA does not consider it necessary (or practical) to estimate the actual cost to each licensee but relies on the fact that the obligation is reasonable and is necessary to protect consumers from harm that may arise from ineffective (or the absence of) complaints handling procedures. Moreover, the guidance provided by URCA consequential to this consultation process allows licensees to efficiently focus their resources in order to establish effective complaints handling procedures. URCA is of the view that licensees who provide consumers with access to fair, timely and effective means to resolve problems minimize potential customer churn and lost revenue, by extension.

The assertion by CBL that there is no empirical evidence to suggest an industry wide problem thereby warranting regulatory intervention at this stage also merits comments by URCA. While empirical/statistical evidence is important and may inform a regulator's decision to intervene⁴, URCA believes that it has a statutory duty to carry out the policy objective of the Comms Act to further the interests of consumers even in the absence of such evidence. Certain communications sector regulators, such as Ofcom, regulate a more mature sector than that which exists in The Bahamas, and has taken what can best be described as a reactionary approach to complaints handling procedures premised on many years of empirical data and industry research. However, in the newly developing communications sector in The Bahamas, URCA has taken a more proactive approach to consumer complaints in discharge of its statutory obligation under the Comms Act.

URCA concludes its general comments with the observation that the responses were broadly in favour of URCA's approach to the proposed guidelines for developing licensee consumer complaints handling procedures.

4. Summary of Responses and URCA's Comments

In this Section, URCA addresses each of the responses submitted in respect of the questions posed in the Consultation Document. The Consultation Document sets out a series of questions aimed at obtaining the views of members of the public, licensees and interested persons on the issues raised therein. Each of the responses has been carefully considered, and the points raised in each have helped URCA in making its Final Determination. Where URCA has decided to pursue any original proposition expressed in the Consultation Document, this is because URCA has not been persuaded by the respondent's arguments to the contrary and believes that

⁴ See Ofcom: "*A Review of Consumer Complaints Procedures, 22 July, 2010*".

its Final Determination is consistent with its statutory functions for the development of the electronic communications sector in The Bahamas.

Below, URCA summarises the responses to the Consultation Document and advises that the full text of each response has been published by URCA and can be downloaded from the URCA website at www.urbahamas.bs under the 'publication' tab. URCA also provides insight into and analysis of the different comments made by the respondents to the questions asked in the Consultation Document.

Question 1: Do you agree that a definition for the term “complaint” is necessary? If so, do you believe that the proposed working definition is adequate? Should you disagree with the adequacy of the proposed definition, kindly explain and suggest an alternative.

BTC

BTC agrees that a definition of the term “complaint” is necessary to remove uncertainty in the complaints handling process but posits that the complaints handling process must “*sit alongside a broader customer services support function*”. As such, BTC recommends delineation between requests or queries for information and a complaint. BTC has therefore suggested the following amendment to the proposed definition for the term “complaint”:

*“an expression of dissatisfaction, **which does not include a request for information**, made by a [consumer] to the Licensee related to the Licensee’s provision of electronic communications services to that consumer, or to the complaint-handling process itself, where a response or resolution is expected”.*

CBL

CBL agrees with the proposed working definition subject to conditions. It believes that there is an element of subjectivity on CBL’s part in determining whether a customer is making a complaint or making a query. CBL argues that not every customer contacts it to report an “issue” is expressing dissatisfaction with service as some customers may be interested in the resolution of an issue as soon as possible.

CBL has asked URCA to clarify whether the proposed code would apply only to “*actual customers or would it be applicable to past or prospective customers or third parties*”.

LT

LT believes that the working definition “*is a good starting point*”. She argues that where there is doubt, the company should ask the customer and allow the customer to decide whether a complaint is in fact being made.

URCA’s Comments

URCA has taken the position that it is necessary to have a common definition that can apply across the sector in order to ensure certainty about what transactions constitute a complaint

and may attract regulatory intervention. URCA is satisfied that the definition of the term “complaint” as proposed in the Consultation Document is fit for purpose as it is both necessary and appropriate. As such, URCA will not make any amendments to the definition at this stage. URCA will, however, monitor the practical application of the definition for efficacy.

URCA agrees that there is an element of subjectivity in determining whether a consumer is making a complaint under the term as defined. This however does not negate the suitability of the definition to capture those circumstances where consumers are displeased with the status quo and require the licensee to take definitive, positive measures to resolve their concerns. A commonsensical approach by the licensee of asking the customer whether a complaint is in fact being made may also be useful.

URCA clarifies that the licensee’s Complaints Procedures should not limit the ability of customers, past or prospective, from making a complaint to a licensee. URCA further makes it clear that licensee’s should accept complaints from third parties, particularly those acting on behalf of others with a disability or the elderly.

Question 2: Do you agree that the principles of fairness and reasonableness should guide the development of the Complaints Procedures? Please provide an explanation for you answer.

BTC

BTC agrees that the principles of fairness and reasonableness should guide the development of the Complaints Procedures. It observes that these principles are outlined in Section 5(c) of the Comms Act, 2009 and are consistent with the principles outlined in Condition 25.5 of the BTC Individual Operating Licence.

CBL

CBL believes that principles are a reasonable standard and that complaints procedures should be accessible to all customers. CBL is of the opinion that complaints procedures should be designed to remove barriers which may prevent a consumer from complaining to a licensee.

LT

LT also agrees that the principles of fairness and reasonableness should guide the development of the Complaints Procedures.

URCA’s Comments

URCA welcomes the level of consensus by the respondents regarding the high level principles of fairness and reasonableness that are to guide the development of the Complaints Procedures. URCA reiterates and re-emphasizes its position that it does not seek to regulate customer service standards, but to ensure that there are minimum processes licensees should establish to effectively receive and resolve consumer complaints.

URCA is therefore careful to ensure that its regulatory measures do not frustrate or render nugatory incentives that the market and competition can create for licensees to continually improve customer service levels.

Question 3: Do you agree that the Complaints Procedures should be made available to consumers without cost? If not, please provide reasoning for your disagreement and suggest a possible cost effective means in the alternative.

BTC

BTC has no objection to the provision of the Complaints Procedures to customers free of charge.

CBL

CBL agrees that the Complaints Procedures should be made available to customers without cost or minimal cost. CBL further holds the position that the proposed code (sic) offers some degree of protection against frivolous complaints in order to avoid licensees having to expend time and resources resolving unmeritorious complaints. In this regard, CBL recommends a direct complaints process to URCA in cases of frivolous complaints.

LT

LT also agrees that the Complaints Procedures should be made available to the customer without cost.

URCA's Comments

It is URCA's overall intent that consumers wishing to lodge a complaint are able to do so in a straightforward manner at minimal cost. Information on how complaints can be lodged and how complaints will be investigated and resolved by licensees should be easily accessible to all consumers wanting the information.

However, URCA considers it would be disproportionate to require licensees to provide the Complaints Procedures document to a wide body of consumers free of charge, many of whom may have very little or no interest in receiving such information. Instead, URCA's position is that licensees should make the Complaints Procedures document easily accessible on the primary page of their website⁵ and make the document available cost free to customers in hard copy or other format upon reasonable request.

URCA notes CBL's recommendation that a direct complaints process to URCA in cases of frivolous complaints should be established. In the Consultation Document, URCA signaled its intent to engage the sector on its internal processes to resolving consumer complaints referred to URCA under the licensee's Complaints Procedures. It is envisaged that issues such as the

⁵ The term "primary page" is used to denote the principal page of the Licensees' website where customers would be expected to visit when seeking information.

treatment of frivolous complaints⁶ and the referral of such complaints will be appropriately addressed therein.

Question 4: What media do you believe should be used to notify customers of the existence of the Complaints Procedures? Please give reasoning for your answer.

BTC

BTC is supportive of the position that a licensee’s Complaints Procedures should be easily accessible. BTC has submitted that URCA need only require that the Complaints Procedures are “sufficiently accessible” and not impose a prescriptive method of notifying the public of the existence of the Complaints Procedures. BTC argues that this is in keeping with “light touch” regulation.

CBL

CBL has expressed the view that notification on the licensee’s website as well as access to a standalone document is sufficient to notify customers of the existence of the Complaints Procedures. CBL has also recommended that URCA’s website provide a direct link to the licensee’s contact page as an additional means of notifying customers of the existence of the Complaints Procedures.

CBL disagrees that periodic billing inserts is the most cost effective means of providing notification to customers of the existence of the Complaints Procedures. CBL argues that this medium would not only be costly but also an inefficient means of raising awareness as new customers seldom take interest in the licensee’s complaints procedure at that stage and more likely not to retain the information.

LT

LT believes that bill inserts seems an ineffective means of notifying customers of the existence of the Complaints Procedures as there is a move to online billing. LT has submitted that the most effective means of notification may be by way of customer contact with a licensee’s agent when filing a complaint.

URCA’s Comments

URCA notes the similar positions expressed by the respondents, particularly the comment by the consumer, that (conventional) billing inserts may be a costly and inefficient medium through which to notify customers of the existence of the Complaints Procedures. URCA believes that the respondents may have given a very restrictive construction to the term “billing insert”. There were no submissions that caused URCA to conclude that the costs of providing billing inserts to consumers would be anything other than minor. In this regard, it would have been useful for the licensees to have provided costing information in support of their position.

⁶ URCA believes that “frivolous and vexatious” complaint is a very narrow category where it is readily apparent that the consumer is pursuing a complaint that is totally without merit and made with the intention of harassing or creating an unnecessary burden for the licensee.

While URCA agrees that companies are encouraged to be cost efficient and move towards electronic billing, an electronic billing does not preclude the insertion of a notification to the customer of the existence of the Complaints Procedures⁷. URCA is therefore satisfied that it is both reasonable and appropriate to proceed with this requirement in light of the potential to provide some benefits to consumers who are actively looking for information about the existence of a licensee's Complaints Procedures (and where to find it), particularly for those consumers without access to the internet.

Question 5: What media do you believe should be used to make the Complaints Procedures available to consumers? Please give reasoning for your answer.

BTC

BTC generally agrees with the URCA proposals and is of the view that, at minimum, customers should be provided with access to a web link on the operator's website. BTC further believes that a standalone document can be made available upon request.

BTC has articulated its concern that URCA is not overly prescriptive in its initiative to list the media to be used by licensees to make the Complaints Procedures available to customers. Recognizing that some customers may have special needs, BTC is of the view that operators should be given the opportunity to "*creatively engineer*" which processes it may require to enhance a customer's ability to lodge a complaint.

CBL

It is CBL's view that the most cost effective means of providing the Complaints Procedures to customers is by making it available as a standalone document on the licensee's website and by hard or soft copy at the customer's request.

LT

It is LT's position that the media through which the Complaints Procedures should be made available to consumers should be as convenient to the customer as possible. LT has suggested on-line filing, e-mail, facsimile, walk-in and over-the-phone as methods by which a customer should be able to file a complaint.

URCA's Comments

URCA considers that the Complaints Procedures document should receive as wide a circulation as possible in order for it to be of benefit to consumers. However, URCA repeats its earlier position as stated in its comments to Question 3 above that it would be disproportionate to require licensees to actually provide the Complaints Procedures document to a wide body of consumers free of charge, many of whom may have very little or no interest in receiving such information. Licensees should therefore prominently publish the Complaints Procedures document on their website and make the document available cost free to customers in hard copy or other format upon reasonable request.

⁷ URCA believes that a one line insertion to a customer's bill should suffice as a "billing insert".

Additionally, for ease of access to consumers, the Complaints Procedures is to be made available as a standalone document.

Question 6: Do you agree that, as a matter of transparency, consumers should be notified and informed by the Licensee of any significant changes to the Complaints Procedures? Please explain.

BTC

BTC agrees with and has no objection to consumers being notified and informed by the licensee of any significant changes to the Complaints Procedures. Taking into account that the necessity for operators to amend the complaints handling procedures from time to time, BTC agrees that the complaints procedures should be re-issued inclusive of the notice of the date of issue of the revised version. BTC holds the view that transparency and disclosure are vital principles of a customer service experience and of corporate governance.

CBL

CBL disagrees that the licensee should notify and inform the consumer of significant changes to the Complaints Procedures. CBL is of the view to do so will be an inefficient use of the licensee's resources and the focus should be placed on accessibility to the Complaints Procedures for consumers.

LT

LT believes that the licensee should have a responsibility to notify URCA of changes to the procedures. LT does not think it necessary for a licensee to inform consumers of changes to the Complaints Procedures. LT has expressed the need to know the process only when a problem arises.

URCA's Comments

URCA maintains its position that, as a matter of transparency, consumers should be notified of any significant changes to the Complaints Procedures by the licensee particularly those changes which are likely to impact the consumers' right to complain or to have their complaint resolved. As such, the Complaints Procedures must provide for the notification and informing of consumers of such changes.

URCA also re-emphasizes that the procedures for lodging, investigating and resolving a complaint should be clear and highly visible to consumers. Consumers should be made fully aware of their right to complain and the right to escalate an unresolved complaint.

Question 7: Do you agree that the periodic review, analysis and revision of the Complaints Procedures by the Licensee should allow for it to be more effective in its application? Kindly explain.

BTC

BTC has no objection to the proposition that the Complaints Procedures should have a mechanism for periodic review. BTC supports the implementation of internal processes for the

treatment of complaints from initial contact by the customer to notification of resolution of the complaint. BTC also welcomes URCA's position to leave the internal processes of review, analysis and revision of the Complaints Procedures to the operators. BTC is of the view that market forces can effectively monitor and incentivize operators to effectively review their Complaints Procedures in order to avoid customer churn.

CBL

CBL agrees that the periodic review, analysis and revision of the Complaints Procedures by the licensee should allow for it to be more effective in its application. CBL argues that, in keeping with "light touch" regulation, the frequency and type of review process should be left to the licensee to implement as necessary, in accordance with the licensee's established service levels.

CBL is of the view that URCA's role should be to create a market where customer service becomes a competitive differentiator.

LT

LT also agrees that the periodic review, analysis and revision of the Complaints Procedures by the licensee should allow for it to be more effective in its application. LT is however uncertain whether this should be mandated. LT has suggested that URCA should have a mechanism to assess the efficacy of a licensee's complaints processes and where there are failures in such processes, the licensee should be required to carry out a review. LT believes that this suggestion is in keeping with the principles of fairness and reasonableness.

URCA's Comments

The effectiveness of the Complaints Procedures should be reviewed regularly to ensure that the objectives are being achieved. The Complaints Procedures must therefore have a mechanism for periodic review. URCA will leave the periodic revision and analysis of the Complaints Procedures to the licensees. However, where URCA receives an inordinate amount of consumer complaints regarding the processes under the Complaints Procedures, it will initiate regulatory measures to require the licensees to review their Complaints Procedures.

Question 8: Do you believe that fifteen (15) business days (and in exceptional circumstances up to thirty (30) business days) is a reasonable period within which a complaint should be resolved? Please provide an explanation for your answer.

BTC

BTC accepts the proposed timescales as reasonable. It however believes that more complex investigations may require cross departmental analyses and high level internal escalation where the complaint is unresolved at first contact or the customer remains dissatisfied. BTC also notes that the 30 day period for resolving complaints is consistent with timelines established by other international regulators.

CBL

It is CBL's position that while the proposed timeframes are reasonable for "*routine complaints*", the timeframes are not realistic in "*catastrophic events*". In the latter circumstances, CBL believes that the timeframes should be more lenient.

LT

LT thinks that ten (10) calendar days should be the maximum period within which a complaint should be resolved. The 10 days should also include the licensee's escalation process. LT recommends two (2) weeks for further escalation to URCA should the complaint not be resolved.

URCA's Comments

URCA believes that the setting of maximum timeframes for the fair and timely resolution of consumer complaints will allow licensees the flexibility to propose a superior service quality in response to customer demands thereby reflecting the competitive nature of the sector. URCA has decided to retain the requirement for licensees to have clearly established timeframes and reasonable escalation procedures for dealing with and resolving consumer complaints. Therefore, licensees will have a maximum period of thirty (30) business days to resolve consumer complaints.

The "30 business days" obligation will also give URCA an important means of taking the necessary enforcement action against licensees that, for example, ignore complaints, refuse to investigate legitimate grievances or who calculate that they can treat complaining customers in a manner where, through a process of attrition, customers are forced to abandon their complaints. While URCA considers that it is important licensees are given a reasonable amount of time to resolve complaints, URCA also believes it is more important that licensees progress complaints promptly. As such, the "30 business days" obligation should be taken as a maximum rather than a standard period to work towards for complaints resolution. URCA is confident that this obligation should help protect and further the interests of consumers by limiting unnecessary, inordinate delays in resolving consumer complaints.

Question 9: Do you agree with URCA's proposal that complaints should be categorised in order to establish reasonable timelines for resolution? If not, kindly suggest an alternative approach.

BTC

While BTC has no objection to this proposal, it recommends that operators be given the opportunity to make an internal assessment as to the timelines for resolution based on (i) the services it provides; (ii) the type of customer; and (iii) the method by which the complaint was made. BTC has grounded its recommendation on the fact that the operator has all the relevant information concerning its services and is therefore better able to address the claims.

CBL

CBL disagrees that complaints should be categorised in order to establish reasonable timelines for resolution. CBL is of the view that the categorization of complaints in order to establish timelines for resolution should be internal to the licensee in accordance with the licensee's service standards. It is CBL's position that it would be too prescriptive should URCA adopt any other approach.

LT

LT has argued that the categorization of complaints may serve a more useful purpose for URCA to assess the efficacy of the licensee and to set realistic goals. LT does not believe that this issue will attract consumer interest. LT repeats the 10 day maximum period for the resolution of all complaints.

URCA's Comments

URCA is sympathetic to the similar positions articulated by the respondents with respect to the categorization of complaints. Having regard to URCA's position that complaints are to be resolved within 30 business days, URCA agrees that licensees should be given the opportunity to make an internal assessment as to the timelines for the resolution of complaints (not exceeding 30 business days) based on the service(s) the licensee provides and the nature and scope of the complaint. Categorization of complaints as a means to setting timelines for the resolution of complaints will therefore be an internal process for licensees and need not be contained within the licensees' Complaints Procedure document.

It is however important that licensees maintain internal processes for categorizing complaints and setting timeframes for the resolution of each category of complaint. The level of granularity to which licensees are expected to categorize and set timeframes for resolving complaints must allow URCA to be able to: (i) monitor the volume of complaints; (ii) identify trends in consumer concerns; (iii) conduct evidence based investigations; (iv) raise issues directly with the licensee; (v) investigate allegations of breaches; and (vi) implement new policies/procedures to protect consumers where necessary.

Question 10: Do you believe that an internal escalation procedure is appropriate for inclusion in the Complaints Procedures? Kindly explain.

BTC

BTC has no objection to the inclusion of a general outline of its internal escalation procedures in its Complaints Procedures for dissemination to customers as it subscribes to the position that openness is a key factor in business success.

CBL

While understanding the need to incorporate the elements of transparency and accessibility into the Complaints Procedures, CBL believes that internal escalation procedure should be in broad terminology.

LT

LT agrees that an escalation process should be included in the licensee's Complaints Procedures. LT believes that the escalation process should be made known to the customer.

URCA's Comments

URCA is satisfied that it is appropriate to require licensees to have a clear and reasonable escalation process in their Complaints Procedures so that there are processes in place for front-line staff to be able to refer complaints upwards through the licensees' line management system or to the licensees' dedicated complaints-handling team. This is a very broad requirement and URCA has deliberately not prescribed which matters should be subject to internal escalation, as recourse to URCA by dissatisfied consumers is as of right.

URCA is satisfied that there should be high level obligations placed on licensees to provide effective escalation standards of complaints handling to their customers. It should therefore be noted that URCA has determined that the requirement for the escalation procedures to be 'clear' as well as 'reasonable'. This is to clarify URCA's expectation that the escalation procedure of the licensee must be communicated to, and understood by, front-line staff.

Question 11: Should the escalation procedure be subject to timeframes within which the complaint should be resolved, depending on the nature of the complaint? If so, please suggest timeframes and provide reasoning for your suggestions.

BTC

BTC offers no objection to the imposition of targeted response times but believes that, in keeping with light touch regulation, URCA should not prescribe what the timeframes should be. BTC recommends that operators should be given the opportunity to determine their response times based, amongst other things, on the categorization of complaints within the general timelines for the resolution of complaints between 15 and 20 days.

CBL

CBL disagrees that the escalation procedure should be subject to timeframes within which the complaint should be resolved. It is CBL's view that there is fair and timely resolution of complaints as the only conditions imposed on the escalation process. CBL submits that any timeframes imposed should serve as internal guidance only.

CBL is unclear on whether the escalation timeframe is inclusive of the proposed period of 15 to 30 business days for the resolution of complaints, but contends that it should. If it is inclusive, CBL argues that imposing timeframes would be unwarranted as the onus would be on the licensee to resolve a complaint within the prescribed period.

CBL also requests clarification on the escalation process within the context of the Alternative Dispute Resolution process scheduled for Public Consultation by URCA.

LT

LT thinks that the escalation process should be included in the overall resolution process and should not exceed 10 days. LT has emphasized that the timeframe for the resolution of a complaint, inclusive of escalation to URCA, should be one month.

URCA's Comments

The high level obligation on licensees to ensure the "fair" and "timely" escalation of unresolved complaints is appropriate and reasonable and should not unfairly burden licensees who genuinely endeavour to resolve complaints. This very high level obligation should also give licensees significant freedom in meeting their customers' expectations. In this regard, URCA is confident that it will be able to identify instances where consumers are not being treated fairly and that it will be able to take appropriate enforcement action when such matters are escalated to it for final resolution.

URCA clarifies that the "fair" and "timely" escalation timeframe is inclusive of the 30 business days for the resolution of complaints by licensees.

Regarding the Alternative Dispute Resolution (ADR) process concern raised by CBL, URCA will not comment substantively at this stage as to do so might prejudice the considerations under that process. It is sufficient for URCA to note that, under section 15 of the Comms Act, URCA has a statutory duty to establish one or more ADR schemes for disputes between licensees and consumers and URCA is obliged to request and take into account proposals from licensees.

Question 12: What are your views on URCA conducting a Public Consultation on its approach and internal processes to resolving outstanding consumer complaints (and other disputes)?

BTC

BTC welcomes the opportunity to participate in a Public Consultation regarding URCA's approach and internal processes to resolving consumer complaints. BTC has also expressed concern that URCA should limit its involvement in disputes between the operator and customers. BTC has highlighted for consideration certain different approaches taken in other jurisdictions to the adjudication of unresolved complaints between operators and customers.

CBL

CBL believes that URCA's internal processes are likely to be of public significance as they may impact persons carrying on activities in the ECS and therefore URCA has a statutory duty to conduct a public consultation on its approach and internal processes to resolving outstanding consumer complaints (and other disputes).

CBL further believes that URCA should clearly and unequivocally communicate to the public that URCA will only intervene to resolve outstanding consumer complaints where such complaints have not been resolved within the timeframe as established by the Code (sic).

CBL requests clarification on how the Alternative Dispute Resolution process relates to URCA's proposed internal complaints procedures.

LT

LT disagrees that a public consultation should be conducted regarding URCA approach and internal processes to resolving outstanding consumer complaints. LT posits that URCA should make its approach and internal processes known and adapt it consequential to comments made by members of the public.

URCA's Comments

Under section 11 of the Comms Act, URCA has a statutory duty to consult on regulatory and other measures of public significance. URCA's internal processes for resolving outstanding consumer complaints referred to it will have a significant impact on the general public and persons carrying on activities in the sector. As such, URCA will conduct a public consultation in this regard.

URCA will also monitor the consumer complaints it receives and take the appropriate and proportionate regulatory action where there is evidence of systemic failings in the handling of complaints by licensees. URCA assures all stakeholders that its investigative approach will follow its published internal processes. Where URCA departs from its internal processes, it expects to give reasons for doing so.

URCA repeats its position regarding ADR as stated in its comments at point 11 above.

Question 13: What measures do you believe that service providers should implement to ensure that consumers would be able to track the progress of their complaint?

BTC

BTC agrees that consumers should have the opportunity to track the progress of their complaint but that URCA should not be prescriptive in this regard. BTC submits that URCA should allow operators to design their Complaints Procedures to meet customer expectation and needs.

CBL

CBL holds the view that URCA should not prescribe any method for a licensee to implement in order to ensure that consumers are able to track the progress of their complaint. CBL believes that the solution has to be tailored to the size and systems of the licensee. CBL submits that the licensee should be able to explore options and demonstrate, on request, that its Complaints Procedures satisfies the general requirement that consumers are able to track complaints.

LT

LT generally agrees with the concept of customers being able to track their complaints and recommended claims management software as a means through which licensees can manage customer complaints.

URCA's Comments

The Consultation Document proposed a general requirement that all licensees' Complaints Procedures should ensure that consumer complaints can be easily tracked and to ensure traceability of all actions taken regarding a complaint should a complainant need to inquire as to the progress of their complaint. URCA considered that it is necessary for licensees to provide a unique identifier in order to facilitate a timely and accurate response to a consumer when inquiries on their complaints are made.

While some licensees may already provide for complete traceability and tracking of complaints, URCA considers this to be an important part of the complaint handling process. It is URCA's intention to ensure that all licensees are in a similar position as it will facilitate the speedy identification of a complaint case history and provide a greater efficiency in handling complaints. URCA has therefore decided that licensees should assign a unique identifier to each complaint. URCA considers that the practical arrangements to fulfil this obligation should be left to the individual licensee.

Question 14: Do you agree that provisions should be made for the retention of records of complaints and how long do you think these records should be kept?

BTC

BTC agrees that records of customer complaints should be retained. BTC submits that the earlier of one (1) year after the complaint has been resolved or 1 year after the last correspondence from the customer to the operator regarding the complaint as a reasonable timeline for the retention of such records by the licensee.

CBL

CBL agrees that provisions should be made for the retention of records of complaints and supports the retention of such records up to 12 months.

LT

LT thinks that URCA should require retention of records sufficiently long enough to allow URCA to collect data and assess effectiveness. LT suggests that URCA should rate a licensee based on its ability to resolve complaints.

URCA's Comments

Licensees should ensure that their systems for recording and retaining consumer complaints records are adequate in order that they can provide the necessary information to customers when they inquire about the progress of their complaint and ensure that there is complete traceability of the actions taken to resolve the matter. It is also important that consumer complaints records be retained by licensees in order to facilitate any possible investigation by URCA and the monitoring by URCA of the efficacy with which licensees resolve consumer complaints.

URCA therefore expects licensees to retain all written records collected and recorded throughout the complaints handling process for a minimum period of twelve (12) months following the resolution of the complaint (whether resolved by the licensee or referred to URCA). Licensees may not go below this minimum threshold. The retention of records must include, but is not limited to, letters, emails to/from complainants, logged complaints related telephone calls and notes made by staff on customer records.

Question 15: Do you agree that the proposed ninety (90) day timeframe is a reasonable period within which a complaint should be lodged. Please explain.

BTC

BTC has expressed no objection to the proposed ninety (90) day timeframe within which the initial complaint should be lodged. BTC believes this timeframe provides the customer an adequate period to identify and formulate concerns.

CBL

CBL disagrees that the proposed ninety (90) day timeframe is a reasonable period within which a complaint should be lodged. It believes this timeframe is excessive as complaints should be lodged expeditiously after the occurrence of an incident. CBL has suggested a thirty (30) day period as more reasonable.

CBL is of the view that, as a matter of consistency with its Code of Practice for the Regulation of Content Services, URCA should be amenable to the suggested 30 day period.

LT

LT believes that the proposed ninety (90) day period is too long and complaints should be lodged quickly. LT suggests a three (3) week period post the customer becoming aware of an issue as sufficient time to lodge a complaint.

URCA's Comments

URCA recognizes that the operations of licensees are dynamic as part of its reasoning for proposing time limits within which a consumer complaint should be brought. Time limits should also decrease the likelihood of frivolous complaints being lodged and assist with ensuring that accurate details concerning the complaint are readily available. More importantly, placing time limits on the lodging of complaints should allow licensees to better direct resources to actually resolving complaints rather than having to research and retrieve archived information related to a complaint on incidents that may have occurred over a longer period. URCA believes it is noteworthy that placing such time restrictions on consumers to lodge a complaint in electronic communications markets regionally and internationally is a very rare occurrence but may prove beneficial to all stakeholders in the ECS in The Bahamas.

Therefore, having had the benefit of the submissions by the respondents, URCA has determined that a time limit of sixty (60) business days after the occurrence of an incident is a fair and reasonable period within which a consumer is required to lodge a complaint with a licensee.

Question 16: Do you believe that URCA should firstly approve proposed changes to the Complaints Procedures by the Licensee? Please explain your answer.

BTC

It is BTC's position that an operator should notify URCA of proposed amendments to its Complaints Procedures. However, BTC believes that the submission of its Complaints Procedures document to URCA for approval should be consequential to a regulatory or legislative initiative. BTC has also suggested that URCA should review the Complaints Procedures and provide its response to the operators within thirty (30) business days.

CBL

It is CBL's position that *ex ante* approval of proposed changes to a licensee's Complaints Procedures is an inefficient use of URCA resources. CBL has submitted that URCA should develop a code establishing regulatory requirements for licensees to resolve complaints in a fair and timely manner. URCA should also outline minimum expectations regarding accessibility, transparency and effectiveness of licensees' Complaints Procedures. CBL is of the view that notification to URCA of changes to the Complaints Procedures is sufficient and consistent with URCA's statutory duty to monitor the consumer protection licence conditions.

LT

LT does not believe that the changes to the Complaints Procedures should be subject to URCA's approval. LT is of the view that the licensee should however submit the Complaints Procedures to URCA and URCA should engage directly with the licensee where there are any glaring concerns.

URCA's Comments

URCA disagrees that it is an inefficient use of its resources to ensure that any significant changes to the Complaints Procedures by licensees are congruent with the policy objective of the Comms Act to further the interests of consumers. The level of competition in the electronic communications sector in The Bahamas, particularly in pay television, mobile voice and mobile data is such that dissatisfied consumers do not have a wide range of choices that they can vote with their feet. It is therefore incumbent upon URCA to ensure that the licensees' Complaints Procedures are adequate and the consumer interests are safeguarded when significant changes are made thereto.

URCA has therefore determined that significant changes or amendments to licensees' Complaints Procedures be made only after firstly obtaining prior approval by URCA. Where licensees are doubtful as to the significance of any proposed changes, they may write to URCA for clarification.

Question 17: What do you consider would be an appropriate time frame within which modifications or amendments to existing Licensees' Complaints Procedures consequential to this consultation should be made?

BTC

BTC is of the view that operators should be given a minimum of six (6) months to implement changes to their existing Complaints Procedures consequential to the publication of URCA's Final Determination.

CBL

CBL finds it difficult to propose a timeframe without knowing the requirements of the "*final rules*". It believes that where the changes to systems and existing processes are significant, budgetary constraints may militate against the changes to be operational for twenty-four (24) months post URCA's Statement of Results. CBL suggests URCA pose this question for public comment after the "*final rules*".

LT

LT recommends a minimum period of three (3) months and a maximum period of six (6) months as an appropriate timeframe for modifications to be made by the licensees to their existing Complaints Procedures.

URCA's Comments

The implementation of the Complaints Procedures by licensees to properly receive, effectively handle and expeditiously resolve consumer complaints is inextricably linked to URCA's statutory function under the Comms Act to carry out the electronic communications policy objective to further the interest of consumers. In this regard, URCA believes it is necessary to emphasize that the licensees, subject to this consultation, are obliged to have in place complaints handling procedures within six months from the date of entry into market. Therefore, the implementation of the Complaints Procedures by licensees should not be subject to inordinate delay.

URCA does not believe that the obligations to develop and implement adequate Complaints Procedures will necessarily involve significant, complex, costly changes to licensees. URCA has determined ninety (90) calendar days from the date of the issuance of this Statement of Results and Final Determination as a reasonable time for licensees to submit to URCA a copy of their Complaints Procedures for the Handling of Consumer Complaints document. URCA has also stipulated an additional thirty (30) calendar days for implementation by the licensee where URCA issues a "Statement of No Objection". Therefore, the cumulative effect of the foregoing is that licensees can avail themselves of approximately four (4) months to become ready for implementation of the Complaints Procedures.

5. URCA's Final Determination

Having duly considered all of the responses to this Public Consultation and in accordance with its powers under section 99 of the Comms Act, the Utilities Regulation and Competition Authority (URCA) hereby issues the following Final Determination:

1. All Licensees who have been issued either an Individual Operating Licence or a Class Operating Licence Requiring Registration shall modify existing Complaints Handling Procedures or develop and implement Complaints Procedures in accordance with this Statement of Results and Final Determination.

General Principles

2. Licensees must be guided by the high level principles of "fairness" and "reasonableness" in developing their Complaints Procedures. There should also be a commitment to the efficient and timely resolution of consumer complaints by licensees demonstrated by an organizational culture which acknowledges the right of consumers to complain and which regards complaints as an opportunity to improve service quality.

Accessibility of Complaints Procedures

3. The licensees' Complaints Procedures document shall contain a clear statement to consumers informing them of their right to complain.
4. Licensees shall notify consumers of the existence and availability of their Complaints Procedures.
5. The Complaints Procedures shall be made accessible to all consumers free of cost. Licensees shall also provide consumers with their Complaints Procedures document in hard copy or other format upon reasonable request free of cost. The Complaints Procedures shall contain a clear statement that the document is without cost to the consumer.
6. The Complaints Procedures shall be made accessible to consumers as a standalone document.

7. The Complaints Procedures must be easy to understand by consumers. Licensees must use plain language and avoid legal and technical terminology when developing their Complaints Procedures document.
8. Licensees shall prominently publish their Complaints Procedures on their website.

Special needs

9. Licensees are encouraged to include in their Complaints Procedures provisions to ensure that, where necessary, elderly persons and persons with physical disabilities are able to access the licensees' complaint handling process, such as:
 - (i) providing an inquiry line, including direct access via a toll free number; and
 - (ii) ensuring that complaints from third parties, who are acting on behalf of customers with special needs, can be made by the authorized representative of such customers by providing a means of authorization that is easily established and verifiable.
10. In cases where customers specifically request assistance in lodging and resolving a complaint consequential to special needs, licensees are also encouraged to provide reasonable assistance where possible.

Defining "Complaint"

11. The definition of "complaint" for inclusion in the licensees' Complaints Procedures shall be:

Complaint means –

- a) an expression of dissatisfaction made by a customer to the licensee related to either:
 - (i) the licensee's provision of an electronic communications service to that customer; or
 - (ii) the complaint-handling process itself; and
- (b) where a response or resolution is expected.

Lodging a complaint

12. Licensees shall specify in their Complaints Procedures the means by which complaints can be lodged by clearly stating the licensees':
 - (i) Contact points or locations where complaints can be lodged;
 - (ii) Contact details (telephone and fax numbers specific to lodging a complaint, postal and email addresses); and
 - (iii) Business hours for contact points or locations for lodging complaints.
13. The Complaints Procedures must state the timeframe within which a complaint can be lodged, which shall be sixty (60) business days after the occurrence of an incident.
14. Licensees shall devise a complaint form to receive and document each consumer complaint. The complaint form shall provide, as a minimum, for the recording of the

following information:

- (i) details of the complainant or person acting on behalf of complainant (name, mailing address, phone and email contact, etc.);
- (ii) date complaint filed;
- (iii) product/service description being complained about;
- (iv) particulars of the complaint;
- (v) possible due date for response;
- (vi) requested remedy;
- (vii) immediate action taken (if any); and
- (viii) enclosures (list of documents supporting complaint).

15. Licensees shall stipulate in their Complaints Procedures the types of supporting information and/or documents the complainant needs to furnish when making a complaint.

Acknowledging of complaint

16. The Complaints Procedures shall provide a clear statement to consumers notifying them that each complaint will be formally acknowledged within a prescribed period. The prescribed period is not to exceed a maximum of five (5) business days.
17. Where the complaint is determined to be frivolous or vexatious by the licensee, the Complaints Procedures must make provision for accordingly informing the consumer within the five (5) business days of receipt of the complaint. In this regard, where the customer is dissatisfied with the decision, the consumer must also be notified of further recourse to URCA under the escalation process.

Tracking and tracing of complaint

18. Licensees shall provide for the assignment of a unique identifier to each complaint and the notification to consumers of the purpose of the unique identifier in accordance with the Statement of Results.

Retaining records

19. Licensees shall notify consumers in the Complaints Procedure that it shall retain all documents and written records collected and recorded throughout the complaints handling process for a minimum period of twelve (12) months following the resolution of the complaint.

Escalation

20. The licensees' Complaints Procedures shall describe the licensees' internal escalation process for resolving consumer complaints.

21. Licensees shall ensure that consumer complaints are subject to a “fair” and “timely” internal escalation process. Where consumer complaints remain unresolved for a period of 30 business days after lodging, such complaints must be immediately thereafter escalated to URCA.
22. The licensees’ Complaints Procedures shall contain a clear statement notifying consumers of their right to escalate unresolved complaints to URCA. Consumers must also be notified that such escalation to URCA is subject to the licensees’ internal escalation process for resolving complaints being firstly exhausted.

Communicating a decision

23. The Complaints Procedures must include provision for the decision or any action taken by the licensee regarding a consumer complaint to be effectively communicated to the consumer as soon as reasonably possible.

Closing a complaint

24. The Complaints Procedures must have the appropriate steps for identifying complaints that have been resolved or remain unresolved after a full investigation.
25. The Complaints Procedures should also provide for informing consumers of the circumstances under which the Licensee will consider the complaint resolved including, but not limited to, the following:
 - (i) the customer has indicated explicitly that he or she no longer wishes to pursue the complaint;
 - (ii) the Licensee and the consumer have agreed a course of action which, if taken, would resolve the complaint to the satisfaction of the consumer; or
 - (iii) the Licensee has taken action that means it is reasonable to consider the consumer is no longer dissatisfied.

Review to Complaints Procedures

26. Licensees must review their Complaints Procedures from time to time to ensure that they are delivering effective and efficient processing of complaints.
27. The Complaints Procedures must contain a statement to consumers that the provisions of the Complaints Procedures and any significant changes thereto will be approved by URCA.
28. The Complaints Procedures must provide a mechanism for notifying consumers of significant changes thereto and how such changes will impact them.

6. Next Steps

URCA expects all Licensees who have been issued either an Individual Operating Licence or a Class Operating Licence Requiring Registration, and subject to this consultation process, to establish procedures for the handling of consumer complaints in accordance with this Statement of Results and Final Determination.

URCA wishes to assure itself that the Licensees referred to above meet the criteria as set out in the Statement of Results and Final Determination, and to that end requires Licensees to submit to URCA a copy of their Complaints Procedures for the Handling of Consumer Complaints document on or before ninety (90) calendar days from the date of the issuance of this Statement of Results and Final Determination.

URCA will review the Licensees' Complaints Procedures within 30 calendar days from the date of submission. URCA will subsequently issue either a "Statement of No Objection" where the Licensee has developed its Complaints Procedures in accordance with URCA's Statement of Results and Final Determination or a "Statement of Objection" where the Complaints Procedures by a Licensee does not meet the criteria under the Statement of Results and Final Determination.

Where a "Statement of No Objection" has been issued by URCA, the Licensee will have within thirty (30) calendar days thereafter to implement the Complaints Procedures. Where URCA has issued a "Statement of Objection" it will provide clear directions to the Licensee regarding the necessary modifications required to be made to the Complaints Procedures. In the latter circumstance, the Licensee will be required to re-submit its Consumer Complaints Procedures to URCA for further review.