



The Utilities Regulation and Competition Authority Alternative Dispute Resolution (ADR) Guidelines

Statement of Results and Final Determination

ECS 19/2014

Issue Date: December 31, 2014

UTILITIES REGULATION & COMPETITION AUTHORITY

UBS Annex Building, East Bay St | P.O. Box N-4860 Nassau, Bahamas | T 242.393.0234 | F 242.393.0153

www.urbahamas.bs

TABLE OF CONTENTS

1. Introduction	3
2. Purpose of this Statement of Results and Final Determination.....	3
3. Overview and General Comments.....	4
4. Summary of Responses and URCA Comments.....	8
5. URCA’s Final Determination.....	33
6. Next Steps	33

1. Introduction

The Utilities Regulation and Competition Authority (URCA) issues this Statement of Results and Final Determination on its “*Alternative Dispute Resolution (ADR) Guidelines Consultation Document – ECS 02/2014*” (“the Consultation Document”). Concurrently with the publication of this Statement of Results and Final Determination, URCA also publishes its Alternative Dispute Resolution (ADR) Schemes for Disputes Between Licensees ECS – 20/2014 (collectively referred to as the ADR Guidelines herein). URCA will also publish its Alternative Dispute Resolution (ADR) Schemes for disputes between consumers and licensees as a standalone document as soon as reasonably practicable.

On March 24, 2014, URCA published the Consultation Document and established May 2, 2014 as the closing date for the submission of responses. URCA received requests for an extension of time for submission of responses from key industry stakeholders indicating that additional time to formulate such responses to the issues and questions involved in the consultation process was needed. URCA acceded to this request and extended the deadline to May 9, 2014 to ensure that its consultation process was as comprehensive and inclusive as possible.

URCA thanks all those who responded in writing to the Consultation Document and 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 sets out URCA’s reasons and reasoning for its decisions to the responses to the issues and questions in the Consultation Document. URCA’s Statement of Results and Final Determination form the basis of the regulatory measures establishing the ADR Schemes that would be implemented by URCA for the resolution of disputes between licensees and disputes between consumers and licensees.

2. Purpose of this Statement of Results and Final Determination

- (i) To summarise the written submissions received in response to the Consultation Document;
- (ii) To provide URCA’s analysis of and comments on the submissions received in response to the Consultation Document;
- (iii) To set out URCA’s reasons and reasoning for its decisions to the responses to the issues and questions in the Consultation Document; and

- (iv) To set out the basis of the regulatory measures establishing the ADR Schemes that would be implemented by URCA to effectively resolve disputes between licensees and disputes between consumers and licensees.

3. Overview and General Comments

The consultation process initiated by URCA with the publication of the Consultation Document 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. 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 Statement of Results and Final Determination. The full text of the responses received to the Consultation Document can be found on the URCA website at www.urcabahamas.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.

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) Broadcasting Corporation of The Bahamas (BCB)
- (iii) Cable Bahamas Ltd. [also responding on behalf of its affiliates Caribbean Crossings Ltd. and Systems Resource Group Limited] – (collectively referred to as Cable Bahamas)
- (iv) Digicel Group

Respondents' General Comments

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

BTC is of the view that successful dispute resolution is the key to attracting investment, bolstering competition and developing the communications sector. BTC believes that the ADR Guidelines provide for the use of minimal and well-focused intervention to create an environment of incentives for constructive ADR.

Cable Bahamas supports a dispute resolution scheme that is fair, timely and cost effective and trusts that, after implementation, the ADR Guidelines are reviewed periodically to ensure that they are fit for purpose. Cable Bahamas believes that part of the ongoing evaluation of the ADR

schemes should be to have consumers and licensees subject to the process provide feedback at the conclusion of their dispute.

Regarding the process between consumers and licensees, Cable Bahamas notes that URCA has divided the types of ADR schemes into schemes applicable to disputes between consumers and licensees and disputes between licensees. It further notes that there is a binding and non-binding mediation process between consumers and licensees under each ADR scheme. Cable Bahamas suggests that if the Mediation Rules are to be applicable to the resolution of disputes, the Schedule of Mediation Fees must be adjusted to reflect a term broader than “per licensee”, since there may be consumers using the process. Cable Bahamas presumes consumers will also share the cost. Cable Bahamas is not clear on what are the parties’ rights where URCA proposes to use the Mediation Rules (e.g. can the parties insist on regular [as opposed to Mediation Rules mediation] mediation unilaterally or mutually).

Regarding the process between licensees, Cable Bahamas understands that disputes between licensees are resolved either using the Mediation Rules or Arbitration. Cable Bahamas is not clear on what are the parties’ rights under the arbitration process. For example, whether the parties are able to insist on a resolution under section 99 of the Comms Act or referral to a Panel? Cable Bahamas suggests that URCA provide criteria or examples on when it may decide to refer a dispute to an Arbitration Panel for resolution.

Cable Bahamas sought clarification on whether the requirement for unresolved consumer complaints to be immediately escalated to URCA after 30 business days automatically triggers the ADR process. If so, Cable Bahamas queried how this would merge with the requirements of sections 7.6 and 8.1 of the Consultation Document.

It is Cable Bahamas’ position that the ADR Guidelines should also indicate that URCA may make interim determinations in appropriate circumstances notwithstanding a dispute may have been referred to an ADR Scheme. Cable Bahamas believes that an interim determination may be useful where it is necessary to maintain the status quo or to avoid aggravating matters and should be available for disputes between consumers and licensees and disputes between licensees.

BCB welcomed the opportunity to participate in the consultation process and supports URCA’s position of having a clearly defined and effective mechanism for resolving disputes between consumers and licensees and disputes between licensees. BCB commended URCA for the progress made thus far and looks forward to the implementation of nondiscriminatory ADR procedures to resolve such disputes.

The BCB however indicated that URCA should take a more active role in ensuring that its codes, guidelines and regulations are adhered to by all licensees rather than only acting on complaints submitted to URCA that URCA considers “worthy”. The BCB noted that URCA should actively monitor all radio and television licensees to ensure compliance.

The BCB concluded its general comments by expressing that exchange of ideas between URCA and industry stakeholders is necessary and important in moving the sector forward.

Digicel expressed gratitude for the opportunity to respond to the consultation document and noted that there are many good features under the ADR Guidelines. It set out three main points Digicel would like URCA to consider.

Digicel noted that licensees with a position of dominance in a relevant market which is the subject of a dispute may have a commercial incentive to engage in protracted negotiations and dispute resolution processes. With this in mind, Digicel stated that URCA should assume it would have to resolve a dispute by arbitration unless it has strong evidence to the contrary. Digicel highlighted the Ofcom approach to resolving disputes where one party is dominant a shorter timeframe and less evidence is required of attempts to resolve a matter before it is submitted to the regulator for arbitration. Digicel urged URCA to be cognizant that a dominant party may feign co-operation by “*drip feeding*” information and meetings as delaying tactics to resolving a matter.

Digicel also suggested that a dominant party in a relevant market will be able to deprive another party of information necessary to know whether there can be a valid dispute. It cited by way of example a denial of a request for facility sharing by the dominant party where the requesting party would not be able to verify the availability of duct space of the dominant party. Digicel believes in such cases there should be a mechanism for the requesting party to have the regulator investigate the matter prior to initiating the dispute resolution process. The requesting party should therefore not be placed at risk of unnecessarily incurring costs consequential to information asymmetry between it and the dominant party.

Digicel believes that constraints should be placed on the total size of written submissions, otherwise the mediator or Dispute Resolution Panel may be buried with copious amounts of documents and arguments for consideration. Digicel states that this would present a challenge to keeping established timelines. As such, Digicel suggests that URCA should require that submissions be as short as possible.

URCA’s Response to Respondents’ General Comments

In response to the concern raised by Cable Bahamas regarding the periodic review of the ADR Guidelines to ensure that they are fit for purpose, URCA has incorporated a review process as part of the ADR Guidelines that would be consequential to industry experiences, developing law and best practice, and any changes to URCA’s powers and responsibilities. URCA notes the suggestion by Cable Bahamas to have consumers and licensees subject to the ADR process to provide feedback at the conclusion of their dispute as part of the ongoing evaluation of the ADR schemes. URCA however believes that such a request or requirement may be unnecessarily onerous to the industry. Consumers and licensees are always open and encouraged to submit representations to URCA in this regard which would be used to inform URCA’s decision to review the ADR Guidelines as necessary.

URCA notes Cable Bahamas’ comment that the Schedule of Mediation Fees be adjusted to reflect a broader term than “per Licensee” in circumstances where the Mediation Rules would be applicable to all parties to a dispute. URCA has decided that under the ADR Scheme for

disputes between consumers and licensees the Mediation Rules will not apply as URCA intends to adopt a less formal mediation process in such matters. As such, an amended to the said Schedule will not be required.

URCA clarifies that the mediation process is voluntary to the parties. It is only where URCA proposes mediation and the parties accept that they will be subject to the Mediation Rules. Where the parties are unable to agree to mediation as proposed by URCA or mutually agrees a mediation process outside of URCA's proposal, the dispute would be appropriately resolved through arbitration or in exercise of URCA's regulatory powers under the Comms Act.

URCA further clarifies that, save for mediation, parties to dispute are not able to insist on which resolution process should be adopted by URCA. URCA would conduct a comprehensive analysis of the nature and scope of the information submitted to it by a party to a dispute and determine the appropriate process and procedure it should adopt to effectively resolve such dispute. URCA notes Cable Bahamas' suggestion to provide criteria on when URCA may decide to refer a dispute to an Arbitration Panel (sic) for resolution. URCA's decision to refer a dispute to a Dispute Resolution Panel would be made on a case by case again depending on the nature and scope of the dispute. However, URCA believes that it is sufficient to say that where the issues for resolution between the parties to a dispute are complex there is a high probability that such dispute would be referred to the Panel for resolution.

The requirement for a party to submit the relevant Notice of Dispute Form is in tandem with the requirement for unresolved consumer complaints to be immediately escalated to URCA after 30 business days. Where a consumer complaint remains unresolved after such period, the Notice of Dispute Form should subsequently be completed and submitted to URCA by the interested party in order to initiate the processes under the ADR Guidelines.

URCA notes the position by Cable Bahamas that URCA should make interim determinations to maintain the status quo or to avoid aggravating matters under a dispute. While there is no statutory basis for URCA to issue an interim determination, under section 96 of the Comms Act URCA has power to issue an Interim Order in cases of urgency due to the risk of serious and irreparable damage to a party to a dispute. URCA may therefore exercise its powers in this regard where appropriate.

URCA assures the BCB and the public that it considers all disputes/complaints "*worthy*" unless they meet the criteria as set out in the ADR Guidelines under which URCA may decline or dismiss a dispute. URCA notes the comment by the BCB that URCA should actively monitor all radio and television licensees to ensure compliance. URCA has a statutory mandate to carry out its functions and exercise its powers in a manner that makes the best use of the economic and other resources available to it. While URCA adopts a pragmatic approach to the use of its resources it also employs an intelligence-led approach to the investigation and enforcement of suspected breaches of the Comms Act and licence conditions.

URCA notes Digicel's comment that URCA should assume it would have to resolve a dispute by arbitration unless it has strong evidence to the contrary. While URCA is cognizant that a licensee with a position of dominance in a relevant market may have commercial incentive to

engage in protracted negotiations and dispute resolution processes, URCA must adhere to the high level principles of fairness and non-discrimination in its approach to resolving all disputes. URCA has a legal mandate under the Comms Act to introduce regulatory and other measures in a manner that is transparent, fair and non-discriminatory. Therefore, any assumption by URCA as suggested by Digicel may be inconsistent with such principles and consequently may have a prejudicial effect on a dominant licensee if implemented under the ADR process.

URCA is mindful of the suggestion by Digicel that in circumstances where there is information asymmetry between parties and the party requesting information is unable to receive it in order to determine whether there is a basis for a dispute that there should be a mechanism for URCA to investigate the matter prior to initiating a dispute. URCA believes it is important to remind licensees that URCA's investigative powers under the Comms Act may be exercised where there is any contravention, alleged contravention or where URCA has grounds to suspect a contravention of the Comms Act or licence condition. As such, where a licensee is uncertain that there is in fact a dispute (as defined under the ADR Guidelines) between it and another licensee, such licensee may submit a complaint to URCA for investigation. Moreover, under the ADR Guidelines, there is a requirement for licensees to firstly engage in good faith efforts to resolve issues that may give rise to a dispute. URCA will give due consideration, *inter alia*, to the general conduct of the parties to resolve the dispute before it is submitted and will take the appropriate regulatory measure when required to resolve a dispute.

The placement of constraints by URCA on the total size of written submissions by the parties to a dispute, as recommended by Digicel, may be untenable. URCA believes that procedural fairness requires it to consider all the evidence and information submitted to URCA that a party to a dispute believes is relevant to such party's case. This is a fundamental tenant of the right to a fair hearing to which URCA must adhere. However, URCA believes that keeping the timelines established under the ADR Guidelines for the resolution of disputes is important and where necessary URCA will request information from parties to a dispute in a form and manner specific to the issues under dispute.

4. Summary of Responses and URCA's Comments

In this Section, URCA addresses each of the responses submitted in respect of the specific 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 its Final Determination is consistent with the electronic communications policy objectives of the Comms Act and URCA's statutory functions for the development of the electronic communications sector in The Bahamas.

Below, URCA summarises the responses to each question under the Consultation Document and reminds that the full text of each response has been published by URCA, which 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 "Dispute" 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 give a detailed explanation for your views and suggest an alternative.

BTC

BTC agrees that the term "Dispute" should be defined to avoid uncertainty as to issues the ADR Guidelines should be applied to. BTC considers the working definition adequate as it is broad and encompassing a wide range of issues.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agreed that a definition of the term "Dispute" is necessary. It suggested the insertion of the phrase "*or likely to be aggrieved*" before the phrase "*by the decision*" to the proposed definition, as "*a person could be aggrieved but not be aware because of ignorance of the law, but the matter could be raised by another interested or concerned party*".

Digicel

Digicel believes that the definition for the term "Dispute" should be modified to the extent that the words "*good faith*" should be deleted therefrom to ensure that URCA is not barred from arbitrating a Dispute where one party has not acted in good faith.

URCA's Comments

URCA is satisfied that the definition for the term "Dispute", 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 but will monitor its practical application for efficacy.

Question 2: Do you agree with the general status and effect of the proposed Dispute Resolution Guidelines? Should you disagree, kindly give a detailed explanation for

BTC

BTC agrees that there will be need to amend the ADR Guidelines periodically once they have been implemented and their use tested within the sector. It recommends that URCA consult with licensees prior to amending the ADR Guidelines to improve the efficiency of settling claims using this procedure. BTC believes that the involvement of all concerned parties in the promulgation of procedures would therefore encourage use of the ADR Guidelines over any other process.

BTC is of the view that decisions resulting from any dispute resolution process should be binding on URCA as well as the parties electing to use the process. It believes that URCA should not be in a position to depart from the ADR Guidelines and thereafter provide its reasons for doing so. It is BTC's position that such departure may be prejudicial to the intent of the parties to a dispute thereby resulting in a reduction in a party's confidence in the application of the ADR Guidelines. BTC argues that URCA should detail the circumstances under which it would depart from the Guidelines before they take effect.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB generally agrees with the status of the ADR Guidelines but finds the non-binding effect of them on URCA "*a little worrisome*". It believes URCA is arrogating unto itself the ability to arbitrarily change the rules. The BCB believes it might be more acceptable to refer to the Statute Laws of The Bahamas rather than changing the rules and that in order for the ADR Guidelines to be effective, it is imperative that they are binding upon URCA as well.

Digicel

Digicel agrees with the general status and effect of the ADR Guidelines.

URCA's Comments

URCA notes BTC's recommendation to consult with licensees prior to amending the ADR Guidelines. URCA believes that any substantive amendments to the ADR Guidelines would be a regulatory measure of public significance which, under the Comms Act, requires URCA to consult all interested parties. URCA therefore assures all stakeholders that it will comply with its statutory duty in this regard prior to amending the ADR Guidelines.

URCA agrees with views of BTC and the BCB that decisions resulting from any dispute resolution process should be binding on URCA, but only to the extent where such decisions are congruent and in accordance with the electronic communications policy objectives under the Comms Act. URCA clarifies that a decision by URCA to depart from the ADR Guidelines would be made in a transparent manner and subsequent to providing its reasons for doing so to the parties and after considering all responses. URCA, however, believes that the procedures under its ADR Guidelines are sufficiently robust and any derogation therefrom, although unlikely, is unforeseeable at this time.

Question 3: Do you agree with the scope of the proposed Dispute Resolution Guidelines? Should you disagree, kindly give a detailed explanation for your views.

BTC

BTC comments that the proposed ADR Guidelines appear to be thorough and provide sufficiently detailed processes for the handling of disputes. BTC believes that issues that may arise can be “ironed out” and revised once the ADR Guidelines are put into practice.

BTC, however, does not agree that the ADR Guidelines should not be applied to complaints. BTC is of the view that a party should be able to choose a preferred process to govern a dispute.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB concurs that the ADR Guidelines are necessary to inform the settling of disputes. It however has difficulty comprehending how any dispute would not involve either broadcast content, breach of competition provisions or licence conditions. The BCB is unclear why the ADR Guidelines could not be another set of rules to supplement the regulations already in effect.

Digicel

Digicel agrees with the scope the ADR Guidelines, subject to its relevant general comments previously outlined above.

URCA's Comments

URCA clarifies that the non-application of the ADR Guidelines to complaints, as referenced under section 5 of the Consultation Document, is in relation to complaints relating to broadcast content and that such complaints are subject to specific treatment by URCA under the Content Regulation Code of Practice as published and revised by URCA from time to time.

URCA also emphasizes that, save for mediation, parties to a dispute are not able to insist or choose which resolution process should be adopted by URCA when resolving a dispute between the parties. URCA believes that where a party to a dispute is able to choose the process to govern a dispute, the other party to a dispute may be prejudiced thereby. A party may, however, indicate in its submission to URCA how it would prefer the dispute to be dealt with (e.g. through the dispute procedures, via mediation, arbitration, etc.). URCA will consider all factors but reserves the right to decide the final resolution mechanism on a case by case basis. It is also important for URCA to determine the appropriate process for resolving matters submitted to it in order to ensure fairness and non-discrimination in the handling of such matters.

URCA further clarifies, particularly for the benefit of the BCB, that while a dispute may involve either broadcast content, breach of competition provisions or a licence condition, URCA has developed and issued regulatory and other measures which set out procedures specific to the effective and efficient handling by URCA of each of those types of matters. URCA believes that to conflate the treatment of the various types of matters that attract URCA's investigative and enforcement powers may create unnecessary confusion and would not be consistent with industry best practice for effectively resolving complaints and disputes.

Question 4: Do you believe that the ADR Guidelines should have clear timeframes? Do you agree with the proposed timelines for the resolution of disputes? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.

BTC

BTC agrees that clear timelines are critical under the ADR Guidelines to ensure that the process moves as expeditiously as possible. BTC believes that the option to extend the timeframe on a case by case basis provides flexibility where the current timelines are impractical based on the circumstances or complexity of a particular dispute.

BTC however argues that the three (3) months for resolution of disputes between consumers and licensees and the six (6) months for resolution of disputes between licensees may be too restrictive and a longer period should be considered by URCA.

BTC agrees with the general position that the timeframe be paused where URCA requests information. It emphasized that clear timeframes for the submission of such information should be provided so as not to prejudice the other party to a dispute due to any inordinate delay in responding to the URCA information request.

BTC requested clarification on how the timeframes set out in sections 8.5 and 8.7 of the ADR Guidelines apply to the pause and restart provisions therein. BTC accepts as sufficient the seven (7) and five (5) business days, respectively, in which information should be made available to URCA.

BTC recommends that a party to a dispute should be given an opportunity to advise URCA whether it is in a position to provide the requested information within the set timeframe. It further suggests that URCA should assess the party's reasons for not being able to comply with the timeframe for providing the information and thereby grant an extension and advise the other party of URCA's reasons for exercising its discretion to grant such extension.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees that the ADR Guidelines should have clear timelines and also agrees with the proposed timelines therein.

Digicel

Digicel agrees that the ADR Guidelines should have timelines and with timelines proposed for the resolution of disputes, subject to its relevant general comments previously outlined above. In the alternative, the tables below set out Digicel's proposed timeframes:

Table 1: Proposals Where Mediation Involved

Dispute Resolution: Proposed Where Mediation Involved	URCA (number of business days)	Cumulative Total	Digicel (number of business days)	Cumulative Total
Part A refers Dispute				
URCA acknowledges	2	2	2	2
URCA initial assessment	5	5	5	5
URCA informs Party A of the course of action (10 days from referral)	10	10	5	5
URCA informs Party B for comments	Max 14	24	Max 14	24
URCA recommendation for Mediation and parties to agree in same timeframe	Max 14	38	Max 14	38
Mediation Process to commence within 5 days	5	43	5	43
Final Resolution	?	?	7	50

Table 2: Determination Process under the Communications Act

Procedure for Determinations under section 100 of the Act (resolve within 4 months)	Time	Cumulative Total Time	Digicel Proposed Time	Digicel Proposed Cumulative Total Time
Party A refers Dispute				
URCA acknowledge within 5 days	5 business days	5 business days	5 business days	5 business days
Prepare Preliminary Determination (including consulting Parties)	Assume based on Act up to 55 days	Assume 2 months	1 month	5 weeks
One month for Party B to comply or respond	One month	Assume 3 months	2 weeks	7 weeks
One month for Final Determination	One month	Assume 4 months	4 weeks	11 weeks

URCA's Comments

URCA has a contrary position to the BTC argument that the three (3) months for resolution of disputes between consumers and licensees and the six (6) months for resolution of disputes between licensees may be too restrictive and a longer period should be considered by URCA. BTC has not however provided full reasoning for its position or proposed alternative timelines.

URCA has given careful consideration to the timelines in juxtaposition to dispute resolution in other jurisdictions. For example, in the UK, regulators have established between four (4) and six (6) months to resolve disputes in furtherance to and compliance with EC Directives. Regionally, the cumulative timeframe established by TATT is approximately six (6) months. As such, URCA believes the timeframes established under the ADR Guidelines are reasonable, adequate and in keeping with industry best practice. It is however important to state that the ADR Guidelines are sufficiently flexible to allow extension of time by URCA where appropriate and where parties to a dispute are not prejudiced by such extension.

URCA clarifies that the pause and restart provisions of the ADR Guidelines are of general application and do not derogate from any specific timeframe for a party to submit or respond to a request for information. Where URCA requests information it will, as far as possible, stipulate the timeframe for response. Consequently, URCA would take the appropriate regulatory measure to resolve or close a dispute based on the information before it at the given time.

URCA notes BTC's recommendation that a party to a dispute should be given an opportunity to advise URCA whether it is in a position to provide the requested information within the set timeframe. URCA further notes BTC's suggestion that URCA should assess the party's reasons for not being able to comply with the timeframe for providing the information and thereby grant an extension and advise the other party of URCA's reasons for exercising its discretion to grant such extension. URCA however believes that in order to comply with the established

timescales under the ADR Guidelines and ensure the effective and efficient resolution of disputes in a timely manner, all parties to a dispute must adhere to the established timescales. URCA does however reserve the right to extend the timeframes under the ADR Guidelines where it considers it appropriate on a case by case basis having regard to representations made by parties to a dispute.

URCA has considered the timelines proposed by Digicel for the resolution of disputes but believes that the established timescales are adequate. URCA will not make any amendments to the timescales at this stage but will also monitor their practical application for efficacy. Where necessary, URCA would propose amendments to the timescales for the consideration of industry stakeholders.

Question 5: Do you agree with the basis on which URCA proposes to decline or dismiss a dispute? Kindly give a detailed explanation for your views.

BTC

BTC comments regarding the binding effect of submissions under the ADR Guidelines are that while it is necessary for a party to include all relevant issues to be resolved at the initial stage of submission of a dispute, there should not be an absolute rule in this regard as it may not always be possible to do so.

BTC proposes that there be a timeframe in which a party can make amendments to its Notice of Dispute, particularly where such amendments would not prejudice the Respondent. BTC recommends that a fee or penalty be imposed on an Applicant who raise new issues or submit information that could have been submitted earlier. BTC suggests that the Applicant should be able to determine the value of the amendment against the fee imposed by URCA.

BTC generally agrees with the criteria under which URCA proposes to decline to hear, dismiss or close a dispute.

Cable Bahamas

It is Cable Bahamas' view that URCA should be able to decline or dismiss a dispute on the basis that it has been filed outside an established time limit. It suggests therefore that URCA should stipulate a time limit in which a dispute has to be referred to URCA. Noting that under the Consumer Complaints Handling Procedures, licensees are required to retain records of a complaint for twelve (12) months, Cable Bahamas suggests that consumers should be aware that unresolved complaints must be referred to URCA within 12 months from the date it is determined that a resolution cannot be reached between the parties. Similarly, Cable Bahamas believes that complaints between licensees should have a 12 month time limit from the date when the dispute was raised between the licensees in which to file a dispute with URCA.

Cable Bahamas suggests that it may be helpful that examples are provided of disputes that may fall within sections 7.8 (i) and (ii) of the Consultation Document.

BCB

The BCB believes it would be helpful to know the basis on which a matter would be determined not to be in the public interest.

Digicel

Digicel agrees with the basis on which URCA proposes to decline or dismiss a Dispute.

URCA's Comments

URCA notes BTC's position that there should not be an absolute rule for a party to include all relevant issues to be resolved at the initial stage of submission of a dispute. It may have been useful for BTC to detail circumstances where a party to a dispute would not be able to fully identify all of the issues under dispute prior to submitting such dispute to URCA for resolution. URCA believes that it is incumbent on a party submitting a dispute to take every reasonable care to properly identify and craft all issues under dispute at the initial stage of submission so as not to prejudice the Respondent. Where a party can show it has taken reasonable care and but for unforeseen circumstances it was unable to identify all issues prior to submitting its dispute, URCA may exercise discretion to accept any subsequent submissions.

URCA agrees with BTC that a party should be able to amend its Notice of Dispute where such amendments would not prejudice the Respondent. However, this would be determined by URCA on a case by case basis and not subject to any established time limits under the ADR Guidelines.

URCA disagrees with BTC's suggestion that a fee should be imposed on an Applicant that raises new issues or submit information that could have been submitted earlier. URCA believes that, in these circumstances, the appropriate regulatory measure may be to refuse to accept such submission of new issues and information where the other party is likely to be prejudiced thereby.

URCA is sympathetic to Cable Bahamas' suggestion that a time limit in which a dispute has to be referred to URCA should be stipulated. URCA will therefore include provisions under the ADR Guidelines to establish clear timelines for the submission of disputes to URCA.

With regards to CBL's request for examples of disputes that may not fall within sections 7.8 (i) and (ii) of the Consultation Document, URCA will make the necessary insertion in the ADR Guidelines to provide as follows:

- (i) the matter is a complaint not subject to or appropriately resolved under the ADR schemes contained in the ADR Guidelines (e.g. disputes regarding broadcast content and complaints regarding breach of the competition provisions of the Comms Act – both of which are the subject of separate URCA Guidelines);

- (ii) the Dispute is not within the regulatory jurisdiction of URCA (e.g. a matter that alleges breach of contractual and/or other private law rights, the Data Protection (Privacy of Personal Information) Act or other Laws of The Bahamas).

URCA notes the BCB query to know the basis on which a matter would be determined not to be in the public interest. URCA recognizes that the “public interest” is an abstract concept which primarily refers to the "common well-being" or "general welfare" of the public. The electronic communications policy objectives under section 4 of the Coms Act inform URCA’s determination regarding the public interest as there is a statutory requirement for URCA to further the interest of consumers by, *inter alia*, encouraging, promoting and enforcing sustainable competition and promoting affordable access to high quality networks and carriage services in all regions of The Bahamas. URCA believes that where the outcome of a dispute submitted to it for resolution may not achieve such policy objectives under the Comms Act, it may not be in the public interest to determine such dispute. URCA however believes that such matters would be very rare.

Question 6: Kindly provide your views on URCA’s proposal to allow an Applicant to withdraw a dispute at any time before a regulatory or other measure is issued.

BTC

It is BTC’s view that an Applicant should be able to withdraw a dispute prior to the issue being resolved by URCA and that the Applicant should bear all of the Respondent’s costs in defending the dispute up to the point of withdrawal.

BTC believes that this rule should be extended to prevent an Applicant from bringing another dispute on the same issues after withdrawal of the dispute, unless there is new, unforeseen information/evidence that could not have been ascertained prior to withdrawal of the dispute.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees with URCA’s proposal to allow an Applicant to withdraw a Dispute at any time before a regulatory or other measure is issued.

Digicel

Digicel agrees with URCA’s proposal to allow an Applicant to withdraw a Dispute at any time before a regulatory or other measure is issued.

URCA’s Comments

URCA particularly notes the response by BTC in relation to costs and believes that BTC's position that the Applicant should bear all costs of the Respondent in circumstances where the Applicant withdraws a dispute prior to it being resolved by URCA fails to consider, *inter alia*, circumstances in which such withdrawal is consequential to a satisfactory resolution of the dispute by the parties that may be external to the ADR process. URCA however believes that its consideration of the conduct of the parties before and after the referral of a dispute to it for resolution would be sufficiently broad to encompass BTC's concern in this regard.

In relation to BTC's concern that the rule relating to withdrawal of a dispute should be extended to prevent an applicant from bringing another dispute on the same issues after withdrawal, the ADR Schemes provide for URCA to decline or dismiss a dispute where, *inter alia*, the dispute is "*trivial, vexatious, misconceived or an abuse of process*" (emphasis added). URCA assures sector stakeholders that it would conduct a thorough analysis of each dispute submitted to it and take the appropriate regulatory measure to resolve such dispute.

Question 7: Do you believe that URCA should use oral hearings as part of its approach to determining a dispute between licensees? If not, provide a full explanation for your position.

BTC

BTC believes that oral hearings may be beneficial to determining a dispute as disputes between licensees may raise complex issues that require clarification. Oral communication may therefore expedite the process.

BTC notes that there should be published guidelines and standards to govern the admissibility of evidence in the ADR process. It believes that the type of evidence that will be accepted and considered should be made known prior to a party participating in oral proceedings.

Cable Bahamas

Cable Bahamas believes that an oral hearing should be an integral part of any ADR schemes rather than an elective provision. It is of the view that consumers can be represented or assisted by an advocate who may be an URCA employee. Cable Bahamas' experience is that written exchanges can be tedious, resource intensive and have limitation in conveying representations or subtleties properly. Cable Bahamas also notes that written presentations tend to prolong matters.

BCB

The BCB believes that oral hearings would be appropriate once the rules of corroboration are adhered to. It opined that if URCA was not to be bound by the rules governing admissibility of evidence in judicial proceedings, it should stipulate the basis upon which evidence would be admitted and the veracity of such evidence would be assessed.

Digicel

It is Digicel's position the URCA should have discretion to use oral hearings as part of its approach to determining a Dispute.

URCA's Comments

The responses to this question highlight a general concern by the respondents as to the admissibility of evidence during an oral hearing. URCA clarifies that the general rules regarding the admissibility of evidence would apply in oral hearings, particularly as they relate to establishing the veracity and corroboration of evidence. It is however URCA's position that it must retain a level of flexibility with the conduct of such hearings in order to ensure the timely resolution of disputes. For example, where parties to dispute agree the authenticity of a document or written statement and the veracity of its content, URCA should be able to admit such document or statement as part of the record without having to follow strict rules of admissibility. As such, URCA does not agree that published guidelines and standards to govern the admissibility of evidence in the ADR process are required.

URCA notes Cable Bahamas' response that consumers may be represented at an oral hearing or assisted by an advocate who may be an URCA employee. URCA agrees and the ADR Guidelines provide that consumers may be represented at an oral hearing. However, it would not be permissible for an URCA employee to advocate on behalf of a consumer if URCA is to maintain impartiality and fairness of the process and be seen to be unbiased when resolving a dispute.

Question 8: Do you agree with URCA regarding reconsideration of its regulatory measure? If you disagree, kindly provide your views on URCA's regulatory measure being reconsidered by URCA.

BTC

BTC requires clarification as to the manner in which a matter would be reconsidered by URCA. BTC asks whether URCA will make this decision of its own volition after review of its decision or whether a party would make an application for review. BTC also requires further clarification as to who would carry out the review.

BTC agrees with the process for rectification where there are clerical, computational or typographical errors.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB considers it would be appropriate for URCA to reconsider its regulatory or other measure in circumstances where new evidence is submitted within a specified timeframe.

Digicel

Digicel agrees with URCA's proposal regarding reconsideration of its regulatory or other measure.

URCA's Comments

URCA clarifies that, under the ADR Guidelines, the process for URCA to reconsider its decision may be initiated on URCA's own initiative or by application of a party to a dispute. It is important to emphasise the very strict circumstances where URCA would reconsider its decision which are limited to clerical, computational or typographical errors. While URCA will exercise extreme care and diligence to avoid such occurrences, URCA believes this mechanism for such reconsideration of its decision facilitates corrections to be made: (i) in a manner that is not prejudicial to the parties; or (ii) without a party having to invoke the formal appeals process.

URCA further clarifies that the process for reconsideration of its regulatory measure would be initiated by application of an aggrieved party to a dispute. Where URCA determines that such party has submitted new evidence or wishes to expand or amend the scope of the original dispute, URCA would consider the prejudicial effect of reconsideration of its decision on the other party. Where the other party is likely to be prejudiced by such reconsideration, URCA would decline to reconsider its regulatory measure. Where the other party is not likely to be prejudiced by such reconsideration, URCA may therefore treat with such circumstances under a new dispute.

URCA notes the BCB recommendation that URCA should establish a timeline for new evidence to be submitted by a party to a dispute in order for URCA to reconsider its regulatory or other measure. URCA however believes that its review of an application by an aggrieved party in order to determine the prejudicial effect of reconsideration of its decision to the other party would take into account the time taken for such application to be submitted. URCA also believes it is sufficient to say that the lengthier the time, the more likely the prejudicial effect may be to the other party. As such, URCA may be less inclined to reconsider its decision where there is an inordinate delay in the application for reconsideration based on new evidence being submitted to URCA.

Question 9: Do you believe that URCA should require a party to a dispute to set out a desired remedy or should URCA determine what remedy is appropriate? Kindly provide full explanation for your views.

BTC

BTC is of the view that an Applicant should set out a desired remedy to allow all parties to know what the applicant seeks to achieve. BTC however believes that URCA should not make an award based on the desired outcome of the Applicant. BTC argues that URCA should retain authority to make a decision regarding the appropriate remedy that is proportionate to the dispute.

BTC further states that such decisions will be binding on the parties as well as published on URCA's website which would serve as precedents of the remedies available for similar disputes.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB believes that it should not be mandatory for a party to set out a desired remedy, but once submitted it should be considered on its merits.

Digicel

Digicel agrees that there should be a requirement for a party to a Dispute to set out a desired remedy. It believes this will help to focus URCA's work by reducing the time and resources required in determining the appropriate remedy.

URCA's Comments

While there is a requirement for Applicants to set out the remedies they consider to be appropriate, URCA's determination regarding remedies would be primarily based on the principle of proportionality. URCA believes however that the remedies set out by the Applicant may be a good starting point, but URCA's determination on remedies would not be based solely on the desired outcome of the Applicant.

URCA disagrees with the BCB that it should not be mandatory for a party to set out a desired remedy. URCA believes that it is both procedurally appropriate and fair for a Respondent to a dispute to know as early as possible the remedies an Applicant is seeking in resolution of a dispute. The Respondent would therefore be able to make representations on such remedies where necessary. As such, it will be mandatory under the ADR Guidelines for Applicants to set out their remedies for URCA's consideration.

Question 10: Do you agree with URCA's proposal to award costs in the circumstances as described in section 7.15 above? If you disagree, kindly provide full reasoning your position.

BTC

BTC firstly comments on Appeals under section 7.14 of the Consultation Document, noting that it will take effect immediately upon publication. BTC observes that appeals are to be made to the Utilities Appeal Tribunal (UAT) or any other competent appellate body. As such, BTC asks for clarification regarding the formation and existence of the UAT. It questions whether there is an anticipated timeframe in which the UAT would be in operation to consider such appeals. BTC stated that *“as the UAT is element in the checks and balances in the regulatory environment and was intended to fetter the expansive powers vested in URCA, its function is therefore critical.”*

BTC does not fully agree that URCA should have discretion to award costs to any party. It argues that as the ADR Guidelines provide that a dispute would not be considered until both parties have demonstrated “good faith” efforts, the successful party would have done all it reasonable could to avoid the matter escalating and therefore should be awarded all costs incurred.

BTC agrees that URCA should consider a party’s conduct and whether the outcome is in the party’s favour when making a determination to award costs. BTC, however, recommends that an offer for settlement should also be considered. BTC argues that where a party makes an offer for settlement which is rejected, where the offer is less than or equal to the award issued by URCA the rejecting party should bear the costs occasioned by the paying party after the date of the offer of settlement.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees with URCA’s proposal anent the award of costs.

Digicel

Digicel agrees with URCA’s proposal to award costs in the circumstances as described under section 7.15 of the consultation document.

URCA’s Comments

The BTC queries regarding the formation and establishment of the UAT go beyond URCA’s remit and the scope of this consultation process. Therefore, URCA is unable to provide substantive comments in this regard. It is however sufficient to say that URCA is aware that the members of the UAT have been duly appointed and believes that the UAT is currently fully operational.

URCA disagrees with the position and recommendation submitted by BTC regarding URCA’s discretion to award costs. URCA maintains that the award of costs to any party to a dispute

must be discretionary, determined on a case by case basis and guided by the principles of transparency, fairness and non-discrimination.

Question 11: What are your views on “Offers of Settlement” and URCA’s role and intervention in the settlement process?

BTC

BTC agrees that there should be an opportunity to make an offer of settlement as this could result in the early resolution of a dispute. BTC believes that the five (5) business days period for a party to respond to an offer of settlement is reasonable in order to avoid delay of the proceedings.

BTC requests clarification on URCA’s proposal to consider a party to have waived any objections to an offer of settlement where the party does not file any comments thereto. BTC questions whether the party is deemed to have accepted the offer because they waived their objections to the offer. BTC further queries whether the offer will be considered by URCA as a potential award where the rejecting party is successful and what effect the offer has where a party has not provided any comments to it.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees with URCA’s views concerning “Offers of Settlement” but believes greater clarity is needed with respect to the number of days allowed for responses to comments on such offers.

Digicel

Digicel agrees with URCA’s proposal anent “Offers of Settlement” and URCA’s role and intervention in the settlement process.

URCA’s Comments

URCA clarifies that where a party does file any comments to an offer of settlement after being duly notified in accordance with the ADR Guidelines, such party would be deemed to have accepted the offer.

Any reasonable offer by a party to settle a dispute would be considered by URCA in its award of costs, to be determined on a case by case basis. Where a party fails to file any comments or rejects a reasonable offer of settlement but is nevertheless successful in the dispute, URCA may adjust downward the total costs awarded to the non-commenting or rejecting party.

URCA further clarifies that a party to a dispute has (5) business days from the date of receiving an offer of settlement to comment on (i.e. accept or reject) such offer. The other (offering) party would thereafter have 5 business days from the date of receiving such comment to respond. URCA recognizes that there may be a level of negotiation (several rounds of offer and acceptance) between the parties in this regard but believes that the established timelines would facilitate progress of the dispute without undue delays. Where it is clear that the parties are not able to agree the offer of settlement, the offer would be deemed rejected and resolution of the dispute would therefore proceed in accordance with the ADR Guidelines.

Question 12: Do you agree with the circumstances under which URCA proposes to close a Dispute? If not, kindly provide explanation for your position.

BTC

While BTC agrees with the circumstances URCA proposes to close a dispute, it submits that in circumstances where the parties have agreed a course of action which, if taken, would resolve the dispute to the satisfaction of the parties the dispute should not be closed until the parties have completed the course of action agreed and have indicated that the matter may be closed.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees with the circumstances under which URCA proposes to close a Dispute.

Digicel

Digicel also agrees with the circumstances under which URCA proposes to close a Dispute.

URCA's Comments

URCA is sympathetic to the recommendation by BTC and would therefore provide in the ADR Guidelines that the dispute would not be closed until the parties to a dispute have completed the course of action agreed and have notified URCA in writing thereof.

Question 13: Do you agree with how URCA proposes to treat with confidential information submitted to it in the ADR process? If not, kindly provide explanation for your position.

BTC

BTC does not agree that URCA should have sole discretion in determining whether to publish a submission marked “Confidential”. It believes that in circumstances where URCA intends to publish a communication marked “Confidential”, it should consult with the party who submitted the information to ascertain its reasons for marking the document confidential. In the circumstances, a redacted version of the communications should be published or another “middle ground” should be sought.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB’s position is that information should be kept confidential only to the extent it does not unduly prejudice a respondent. Where the respondent may be prejudiced by the information, the respondent should have access to such information with an opportunity to make representations against disclosure. The BCB also believes that consideration by URCA should be given to issuing prior notice of intent to release confidential information publically.

Digicel

Digicel agrees with how URA proposes to treat with confidential information submitted to it under the ADR process.

URCA’s Comments

URCA notes BTC’s disagreement anent URCA having sole discretion to determine whether to publish a submission marked “Confidential”. URCA clarifies that the exercise of URCA’s discretion in this regard has always been based on the principle of reasonableness. URCA’s determination to publish information identified as “Confidential” would therefore consider, *inter alia*, representations by the affected parties and a request for a redacted, non-confidential version of such submissions by a party for publication. URCA has also adopted the approach of requesting a party to submit suitable language in its submissions to avoid disclosure of information a party regards as commercially confidential.

URCA agrees with the comments by the BCB that URCA should consider the prejudicial effect of disclosure of confidential information on a party when determining whether to publish such information. It is URCA’s practice to give prior notice to a party who may be affected by disclosure of potentially confidential information and seek representations from such party before URCA exercises its discretion to publish.

Under the ADR Guidelines, URCA would therefore exercise its discretion in a reasonable manner and take into account the potential prejudicial effect on a party to a dispute consequential to publication of confidential information.

Question 14: Do you agree with the criteria URCA proposes to establish for the referral to it of disputes between a consumer and licensee? If not, kindly provide explanation for your position.

BTC

BTC agrees with the criteria established for resolving disputes between a consumer and a licensee. It noted that where a consumer and a licensee are unable to resolve a dispute within the prescribed thirty (30) days, resolution is unlikely without URCA's intervention.

BTC however believes that there should be an extension to the aforesaid period where the parties are nearing settlement and require more time to negotiate. BTC urges URCA to be mindful that quick escalation of dispute to URCA could encourage consumers not to take seriously the licensee's internal complaints handling process. BTC suggests that, in this regard, URCA may become inundated with such disputes and encounter increased administrative issues in the management of the same.

BTC notes that publication of decisions between consumers and licensees may have adverse effects on the licensee and potentially open the floodgate for consumers to bring frivolous disputes motivated by potential compensation.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees with the criteria URCA proposes to establish for the referral to it of disputes between a consumer and licensee.

Digicel

Digicel also agrees with the criteria URCA proposes to establish for the referral to it of disputes between a consumer and licensee.

URCA's Comments

URCA disagrees with BTC's position that there should be an extension to the 30 business day period for referral of a dispute to URCA where the parties are nearing settlement and require more time to negotiate. URCA believes that where parties are confident they are near resolving a dispute they may agree not to escalate such dispute to URCA. Such decision/agreement would not act as a bar to URCA resolving the dispute should it be subsequently escalated to URCA but may demonstrate "good faith" efforts by the parties to resolve the same. Conversely, where there is "quick" escalation of a dispute to URCA, this could signal to URCA that the submitting party may not have made adequate good faith efforts to firstly resolve the dispute and such dispute may be reverted to the parties.

URCA however emphasizes that there should not be any undue delay in submitting a dispute between a consumer and licensee to URCA. Where the consumer and a licensee are not able to resolve a dispute within the prescribed thirty (30) business days, as per the licensee's Consumer Complaint Handling process, and they have not agreed to delay submitting it to URCA, the dispute should be escalated to URCA as required.

URCA also notes BTC's comments that publication of URCA's decisions in relation to disputes between consumers and licensees may have adverse effects on the licensee and potentially cause consumers who are motivated by compensation to bring frivolous disputes. URCA disagrees with BTC and reminds BTC that, under the ADR Guidelines, URCA may decline or dismiss a dispute that is, *inter alia*, frivolous and vexatious. More importantly, URCA has a statutory duty under the Comms Act to publish promptly its determinations on its website after taking into account legitimate reasons of commercial confidentiality. As such, a refusal by URCA to publish its decision in this regard may be inconsistent with URCA's statutory mandate.

Question 15: Do you agree with the proposed approach by URCA to assessing a Dispute? If not, kindly explain and suggest an alternative approach.

BTC

BTC agrees with URCA's proposed approach for assessing disputes. BTC notes that the appointment of a Case Officer allows there to be a point of contact within URCA with whom the parties can liaise throughout the ADR process.

Observing that the ADR Guidelines provides for the Case Officer to refer a dispute back to the parties for additional negotiation or assist the parties in attempting to resolve the dispute, BTC suggests that URCA provide further information regarding the powers of the Case Officer in facilitating further discussions and negotiations that would be beneficial to the licensee.

BTC also agrees that a request for further information should be made by a Case Officer who requires such information before assessing a dispute and making a decision on the way forward. BTC notes that the ability to close a dispute for failure to provide further information is useful in weeding out disputes that lack substance or are unfounded.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees with the approach URCA proposes to assessing a Dispute.

Digicel

Digicel also agrees with the approach URCA proposes to assessing a Dispute and emphasized its agreement with the Consumer Dispute resolution process.

URCA's Comments

URCA notes BTC's comments that URCA should provide further information as to the powers of the Case Officer in facilitating further discussions and negotiations that would be beneficial to the licensees. The powers of the Case Officer is generally limited to the initial review and analysis of the information submitted by the parties to the dispute and taking the appropriate steps to progress resolution of the dispute in a timely manner under the ADR Guidelines. The Case Officer may also engage with the parties to a dispute only to the extent where the Case Officer believes that the progress of such dispute may be expedited through direct assistance to the parties. For example, the Case Officer may contact the parties to the dispute to ensure receipt of all documents and information pertaining to the dispute or regarding offers of settlement between the parties. URCA believes it is important to emphasize that role of the Case Officer is not intended to replace or circumvent the mediation or arbitration processes under the ADR Guidelines but to facilitate the speedy and amicable resolution of the issues under dispute.

Question 16: Do you agree with the proposed approach by URCA to facilitate mediation between a consumer and a licensee through the appointment of the CCRM as a mediator? If not, kindly explain and suggest an alternative approach.

BTC

BTC disagrees with the five (5) day timeframe within which a licensee should submit a Response to Dispute Form. It argues that this timeframe is insufficient. BTC's position is that this places an unreasonable demand on the licensee. BTC believes that the extension of these times is particularly important as URCA may take the appropriate regulatory or other measure to resolve the dispute based on the information it possess at that time.

BTC agrees that mediation can be useful when resolving a dispute between a consumer and a licensee and that such dispute should not reach the stage of the CCRM where the licensee has taken all reasonable steps to resolve the dispute using the licensee's Complaints Handling Procedures.

Cable Bahamas

Cable Bahamas offers no objection to an employee of URCA being appointed mediator but cautions that the designation that the employee be the CCRM may be too restrictive.

BCB

While the BCB believes that the idea is sound, it suggests that it might be useful for the CCRM to be someone very familiar with the technology involved in modern communications and the issues under dispute.

Digicel

Digicel agrees with the proposed approach by URCA to facilitate mediation between a consumer and a licensee through the appointment of the CCRM as a mediator.

URCA's Comments

URCA is mindful of BTC's concern that the five (5) day timeframe within which a licensee should submit a Response to Dispute Form is insufficient. URCA however disagrees and believes that disputes between consumers and licensees and between licensees must be resolved within the shortest possible time.

While URCA recognizes that the issues under dispute between licensees may be complex, the potential harm to consumers and the sector as a whole requires URCA to ensure that its ADR schemes provide for the timely, efficient and effective resolution of such disputes. It is therefore URCA's position that the timeframes established by the ADR Guidelines are reasonable and necessary for the timely resolution of disputes thereunder.

Question 17: Do you agree with mediation by URCA as an alternative mechanism to resolving a Dispute? If not, kindly suggest any additional approach and your reasons for any other approach. Please also provide comments to the draft Mediation Rules as contained in Annex B.

BTC

BTC agrees that mediation is an excellent form of dispute resolution in matters where the parties are unable to settle their dispute. It believes mediation is an advantage over judicial intervention as mediation facilitates the speedy resolution of a dispute in a cost effective manner.

BTC notes that, as mediation is not binding on the parties, where a party refuses to engage in mediation such refusal should be considered when determining costs. It is BTC's position that a successful party should bear part of the costs where they fail to seek redress through mediation upon URCA's recommendation.

BTC is also concerned about the lack of skilled industry mediators in The Bahamas and that those who may qualify to mediate may be conflicted, potentially having previously worked for one of the licensees to a dispute.

BTC believes that the Mediation Rules provide a good starting point for the engagement of the mediation process. BTC notes however that the Mediation Rules may need amendments consequential to their practical use in resolving disputes.

BTC does not agree with non-disclosure of communications to the other party in circumstances where the mediator meets separately with a party to a dispute. It is BTC's position that there should not be any private discussions with the mediator as this would not assist with transparency in the process. BTC submits that parties should provide all information that may assist in the speedy resolution of a dispute in good faith and therefore provide full and frank disclosure.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB agrees with mediation by URCA as an alternative mechanism to resolving disputes. It has opined, however, that any official mediation body might be just as acceptable as such body would bring further distance from the process with no perceived vested interest in the process.

Digicel

Digicel believes the appropriateness of mediation may be determined having regard to the following table:

	Alternative forms of dispute Resolution	Determination by URCA
A large number of parties involved	X	√
One of the parties is dominant in the relevant market	X	√
Both parties are dominant in the same market	√	X
None of the parties are dominant in the relevant market	√	X
Similar disputes are resolved in other industries without the intervention of the regulator	√	X
No welfare loss would result from failure to agree	√	X

URCA's Comments

URCA welcomes the broad support expressed by the Respondents to the Consultation Document for the mediation process a part of the ADR schemes under the ADR Guidelines.

With regards to BTC's position that where a party refuses to engage in mediation such refusal should be considered when determining costs, URCA maintains that the determination of costs will be predicated on the conduct of the parties before and after the referral of a dispute to URCA for resolution. URCA emphasizes that award of costs to any party to a dispute must be discretionary, determined on a case by case basis and guided by the principles of transparency, fairness and non-discrimination. URCA restates its position that mediation is a voluntary process to be agreed between the parties to a dispute and believes that the attachment of any form of sanction for failure to engage the mediation process may have the unintended consequence of penalizing the party who declines mediation. As such, mediation may be seen as obligatory/mandatory, which is not URCA's intent under the ADR Guidelines.

URCA notes BTC's concern that persons who may qualify to mediate may be conflicted, potentially having previously worked for one of the licensees to a dispute. URCA disagrees with this view as under the Mediation Rules the mediator shall be, *inter alia*, a person who is neutral, independent and impartial (emphasis added). The parties to a dispute would be able to submit representations for URCA's consideration on the appointment of a mediator and where necessary state reasons for any objection to the appointment of a particular mediator.

URCA further notes BTC's disagreement with the non-disclosure of communications to the other party in circumstances where the mediator meets separately with a party to a dispute and that there should not be any private discussions with the Mediator as this would not assist with transparency in the process. URCA disagrees with BTC's position as the Mediator has no authority to impose a settlement on the parties and is required to give equal consideration to the rights and obligations of the parties. Further, parties to a dispute may wish to meet separately with the Mediator concerning matters of commercial confidentiality that would not be appropriately disclosed to the other party. URCA therefore believes that any party to a dispute should be able to meet separately with the Mediator and should also be assured that consequential to such meeting there would be non-disclosure of communications to the other party in the circumstances.

URCA however agrees with BTC that parties to a dispute should provide all information that may assist in the speedy resolution of a dispute in good faith and provide full and frank disclosure.

URCA notes the view by the BCB that any official mediation body other than URCA might be just as acceptable as such body would bring further distance from the process with no perceived vested interest in the process. Not having the benefit of the BCB's full thinking in this regard, URCA believes it is sufficient to say that the ADR Guidelines provide for the parties to a dispute to pursue mediation before any competent body to which they agree. URCA recognizes that there is a dearth of established ADR schemes in The Bahamas and therefore offered the facility of mediation to the parties to a dispute. URCA however assures stakeholders that where it carries out mediation to assist parties to reach an amicable settlement, it would be guided by

the high level principles of fairness, transparency and non-discrimination and would have no “*vested interest*” in the outcome of the process.

URCA takes note of the recommendation by Digicel regarding the factors for consideration to determine the appropriateness of mediation and believes that they may provide a useful starting point for consideration by URCA.

Question 18: Do you believe the referral of disputes to a Dispute Resolution Panel allow for the timely and effective resolution of potentially complex disputes? Please provide a full explanation for your position.

BTC

BTC agrees that the referral of a dispute to a Dispute Resolution Panel may be useful in resolving matters that involve complex issues. BTC notes that there may be need for expert assistance as URCA’s resources may be limited and the licensees may not be able to resolve a dispute using their internal experts. BTC therefore believes that the assistance of independent experts in a particular field to provide an objective view of the issues would be needed.

Cable Bahamas

Cable Bahamas did not provide any specific comments to this question.

BCB

The BCB believes that this is one of the best ideas advanced as many of the issues could be of a highly technical nature.

Digicel

Reiterating relevant aspects of its general comments, Digicel believes that there should be an expectation that where one or more parties are dominant in a relevant market, the regulator should drive the resolution of the dispute by means of the Panel. It also restated the need for limits to be placed on the length of written submissions.

URCA’s Comments

URCA notes the broad support by the respondents for URCA’s proposal in this regard and will therefore implement referral of disputes to the Dispute Resolution Panel as proposed under the Consultation Document. URCA believes that it has addressed Digicel’s concerns on this issue as raised under the General Comments at Section 3 herein.

5. URCA's Final Determination

WHEREAS having duly considered all of the responses to this public consultation process 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. the Utilities Regulation and Competition Authority will publish Alternative Dispute Resolution (ADR) Schemes for the resolution of disputes between licensees and disputes between consumers and licensees. The ADR Schemes will be published as standalone documents and revised from time to time by URCA;
2. the respective ADR Schemes will set out the procedures that URCA expects to implement when resolving disputes between consumers and licensees and disputes between licensees in the electronic communications sector for The Bahamas;
3. licensees and consumers in the electronic communications sector shall comply with the ADR schemes established by URCA; and
4. URCA shall revise the ADR Schemes from time to time subject to industry experiences, developing law and best practice, and any changes to URCA's powers and responsibilities under the Comms Act.

6. Next Steps

URCA will publish each ADR Scheme on its website as a standalone document. URCA will revise the ADR Schemes from time to time consequential to industry experiences, developing law and best practice, and any changes to URCA's powers and responsibilities.

Consumers and licensees are encouraged to submit representations to URCA at any time that may be used to inform URCA's decision to review and revise the ADR Schemes as necessary.