



STATEMENT OF RESULTS

CONSULTATION ON THREE YEAR STRATEGY & ANNUAL PLAN for 2011

ECS 06/2011

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1. INTRODUCTION

The Utilities Regulation and Competition Authority (URCA) issued a public consultation on 10 December 2010 on its Three Year Strategy & Annual Plan for 2011. The deadline for submission of responses was the 21 of January 2011.

The Draft Annual Plan (the Draft Plan) was published pursuant to section 41 of the Utilities Regulation and Competition Authority Act (“the URCA Act”), which requires URCA to publish the Draft Plan on its website no later than the end of the financial year. URCA is required to give interested parties the opportunity to comment on the Draft Plan.

For the financial year commencing on 1 January 2011 and ending on 31 December 2011, the Draft Plan outlined:

- Broad priorities of URCA;
- URCA’s strategy;
- A series of key performance indicators which URCA shall use to measure its performance;
- The level of remuneration to be received by non-executive and executive members; and
- URCA’s budget.

This is a summary of responses to the consultation. The full text of the submissions can be found at URCA’s website (www.urbahamas.bs).

Based on comments received, URCA has made some modifications to the 2011 Annual Plan (Final Plan) and this has been published jointly with the 2010 Annual Report. The Final Plan can also be downloaded from URCA’s website.

2. OVERVIEW

The participation by the respondents was very useful in this consultation process. The depth of the responses has provided much for URCA to consider.

Three companies submitted responses to the consultation document, namely:

- Bahamas Telecommunications Company Limited (“BTC”);
- Cable Bahamas Ltd. (“CBL”) and Caribbean Crossings Ltd. (joint response and collectively referred to hereinafter as “CBL” for convenience) and;
- Systems Resource Group Limited (“SRG”).

URCA wishes to thank all respondents for their written responses and participation in the consultation process. The participation from the respondents was very useful. In order to clarify certain comments made by them, URCA met with BTC and CBL before preparing this Statement of Results.

BTC welcomed the opportunity to comment on the Draft Plan. All of the respondents expressed varying degrees of concern on areas such as the proposed strategic priorities; timing of projects; level of URCA budget; the need for additional details in URCA’s budget; amongst other things.

It is worthwhile noting that this is only URCA’s second Annual Plan and as such, with more experience the annual plans will be refined over time to ensure that there is even greater inter-lock between the needs of all stakeholders. In order to achieve this, URCA encourages interested parties to:

- submit views on what they consider to be a priority for the upcoming year by September of each year;
- feel free to submit alternative quarterly plans when responding to the consultation; and
- meet with URCA during the consultation period.

URCA did not ask specific questions in the consultation document. To facilitate the summary of responses section URCA grouped types of similar comments into categories. Section 3 of this document sets out these categories along with a summary of the respondents’ comments and URCA’s proposed action and comments.

3. SUMMARY OF RESPONSES RECEIVED

3.1 URCA's Strategy and Work Plan Priorities

CBL

CBL commented that it would like to see an efficiency objective integrated into all aspects of URCA's priorities and functions, and added that when setting URCA's agenda, there should have been regard to the cost burden imposed on regulated entities. In CBL's view the implementation of number portability should take precedence over infrastructure sharing.

BTC

In BTC's view, URCA should expand its current public education initiative by establishing strategic alliances with local institutions (such as the College of The Bahamas, the Church and other civic organisations). It further added that URCA should review its priorities with a view to integrate the principle of "light touch regulation". BTC has commented that the compacting of several projects in the first half of 2011 is unfair and burdensome to the industry, which must also operate going concerns in an efficient and profitable manner.

URCA's Response

URCA is required to operate efficiently and provide value for money regulation. In order to demonstrate this, URCA has developed key performance indicators, and published those within its 2010 Annual report. Monitoring performance is critical to making informed decisions about efficiency.

URCA has to cover a lot of ground in the first few years, which differs widely from the remit of the Public Utilities Commission (PUC), the predecessor to URCA.

Furthermore, compared to other jurisdictions in the Caribbean which had a policy approach of phased liberalisation, The Bahamas whilst having some services liberalised, has adopted a policy approach of immediate and full liberalisation of all services (with the exception of cellular mobile). This together with the urgency of addressing long-standing regulatory issues, has added to the ambitious nature of the plan. As a result of becoming both the broadcasting regulator and the competition authority, this put a heavy demand on URCA's resources from licensees and stakeholders.

It is typically the case that some licensees may wish for URCA to accelerate the timing of a particular project, whilst other licensees may wish URCA to delay the timing of the same project. URCA's role is to balance the competing needs of all stakeholders and it has attempted to do so by looking at the regulatory agenda for the year and the timing of projects not only on URCA's workload but also the ability of the industry to respond.

Consequently, in light of the heavy work load proposed for the first half of 2011, URCA has reprioritized some projects to ensure that they are better spread out through the year. Additionally, since both CBL and BTC questioned the need for any work on infrastructure sharing this year, especially in light of

greater certainty on the timing of cellular liberalisation, this consultation has been cancelled for 2011. However, should there be a need for URCA to intervene in commercial matters that pertain to the sharing of infrastructure; this will be assessed on a case-by-case basis.

3.2 Appointment of Chair of Audit Committee

The functioning of the Audit Committee is of particular concern and importance for CBL. CBL believes that the activities of the URCA Board should be made more transparent to stakeholders given URCA's high degree of financial independence. It requested information on the process for appointing the Chair of that Committee – whether this has commenced and Chair has been selected, which candidates were considered and the criteria, timetable and process used.

URCA's Response

URCA has conducted its affairs in a very open, transparent and professional manner, as required by statute and consistent with best regulatory practices. Whilst no formal external oversight is envisaged in the URCA Act, it is for this very reason that there is a requirement for URCA to publish the plan in draft for consultation. Moreover, while it is normal for other regulators in The Bahamas to publish Annual Reports, URCA is the only authority that publishes its plan for the next financial year and invites comments from stakeholders. Additionally, and in accordance with section 41 of the URCA Act, URCA has a statutory duty to arrange at least one oral hearing to present the Annual Plan and Annual Report and allow questions from interested third parties to be answered.

Licenses should not downplay the oversight role of the Audit Committee. The URCA Act requires the Board to appoint a chairman of the Audit Committee who is independent of URCA, that is, not a non-executive or executive member or member of staff of URCA. Section 33 (2) of the URCA Act requires the Audit Committee to submit a report to the Board on (i) URCA's performance against its Annual Plan; and (ii) the extent to which URCA's deployment of its financial resources has delivered value. Therefore, the Audit Committee plays a very important role in the oversight of URCA's fiscal responsibility.

The Audit Committee which, as required by the URCA Act, is chaired by Mr. Philip B Stubbs, a public accountant, consistent with the provisions of the Act, is not a member of the Board or a member of staff of URCA and is a public accountant. The Board initially appointed Mr. Stubbs in October 2009 (disclosed in URCA's Annual Report for 2009) and has recently renewed Mr. Stubbs' appointment until 31 October 2011. This appointment was made pursuant to the procedures and criteria specified in section 33(1) of the URCA Act. For ease of reference section 33 (1) states:

“The board shall appoint an audit committee chairperson” who shall “(b) have appropriate accountancy skills and experience and shall be registered as a public accountant in accordance with the Public Accountants Act.”

The Audit Committee met twelve times in 2010 and led the tendering and selection process for the selection of URCA's auditors for the three years 2010 - 2012, as well as assisting with developing risk management indicators, and gearing towards greater financial control and internal audit.

The Board also met twelve times in 2010 as required in the URCA Act. A continuing theme for the Board is to be transparent in its workings and decisions and URCA is one of the leading regulators nationally, as well as regionally, in publishing a Quarterly Report of the Board.

3.3 Measuring URCA's Effectiveness

CBL

CBL has made a number of recommendations regarding the measurement of URCA's performance for 2010 and onwards, as follows:

- the final plan for 2011 should contain an assessment of URCA's performance relative to the 2010 KPIs;
- the final plan for 2011 should contain the approved KPIs for 2011, these KPIs should include a list of the specific regulatory achievements URCA plans to complete by 31 December 2011 as a matter of priority; and
- adopt an annual industry evaluation of URCA's performance, as suggested by BTC.

BTC

It is BTC's proposal that service providers be involved in any evaluation of URCA's performance, especially as it relates to objective 24 of the Sector Policy on "light touch regulation"

URCA's Response

The Final Plan for 2011 contains the approved KPIs for 2011. URCA has already measured itself on these KPIs for 2010 and the actual 2010 performance is contained the 2010 Annual Report.

As a matter of principle, URCA has included those projects in the 2011 Annual Plan that it expects to start and finish within the year. However, interested parties need to be mindful of inter-dependencies between projects, or unplanned events that divert resources away from planned projects. For example, in the last quarter of 2010 and first quarter of 2011, URCA expended considerable effort in carrying out merger reviews (CBL/SRG and BTC Privatisation) that were unanticipated in terms of their occurrence or timing.

Consequently, the Final Plan has relatively few planned projects for the 4th Quarter of 2011 as URCA has taken on board concerns raised by interested parties on workload.

URCA would welcome annual evaluation by its licensees and will engage further with them at the end of the financial year. URCA would also consider the benefits of having an annual independent survey by an

internationally recognized professional firm. However, licensees need to bear in mind the cost of an annual independent survey. As such, URCA is considering these comments and looks forward to further industry engagement on this.

3.4 Institutional capacity building

BTC wanted URCA to demonstrate its commitment to institutional capacity building by:

- ensuring knowledge transfer and up skilling of local employees; and
- recruiting local talent who can be trained to be a part of the regulator's office.

BTC believes its proposals would reduce staff costs and URCA's budget. In commenting further, BTC noted that there is a critical imbalance and/or deficiency, at the present time, with regard to the technological expertise essential to adequately and effectively address the regulatory mandates of the sector. BTC urges URCA to expeditiously address this shortcoming.

URCA's Response

URCA's Human Resources strategy is geared towards driving people excellence and building institutional capacity. It can be seen from the 2011 budget that there is decrease in professional advisors' costs and increase in staff costs, as URCA aims to have more of the tasks performed by URCA colleagues.

As part of its continuing efforts with external advisors, significant emphasis is placed on requirements to develop and train URCA's local staff, so that in the medium-to-long term there is greater experience and knowledge within the organisation. The selection of a local Director of Policy and Regulation is testament to the efforts made to train and develop local staff. Furthermore, considerable financial resources have been ear-marked for training and development of URCA's staff.

URCA has made certain decisions on the level and mix of resources within the organisation. It recognises that there is a currently a need for additional technical resources which are being addressed. In the meantime, URCA will rely on existing internal staff and external professional advisors to ensure that there is no gap in the provision of technical advice. It should be noted that when URCA requested BTC to identify whether BTC had experienced particular delays or challenges with URCA's decisions on technical matters, BTC was not in a position to elaborate further on this.

3.5 Fee Schedule 2011

CBL

The timing of licensee fee payments remains a major area of concern for CBL. It has argued that the current payment regime is not in sync with one or more Comms Act objectives, and advises that

quarterly payments (without interest) would be a more commercially reasonable approach and is in line with practices elsewhere.

BTC

BTC has maintained that the Communications licence fee (3% of relevant turnover) is onerous, especially in light of:

- the statutory requirement for the entire amount to be paid upfront; and
- the statutory interest under section 94 of the Comms Act specifies a surcharge of 4% over prime lending rate for delinquent or late payment.

It recommends that the fee schedule be amended to indicate:

- criteria used for classifying the radio frequency bands into premium and standard spectrum; and
- how service providers and their customers should be protected from an impromptu re-categorization of standard spectrum bands to premium spectrum.

URCA's Response

In relation to the URCA fee, licensees have a choice of paying the full annual URCA fees in advance or paying quarterly (in advance) with interest as required by URCA.

With respect to the Communications Fee:

- URCA is not in a position to comment on the level of the Communications Fee as this is mandated by statute;
- Section 94 of the Comms Act provides the legal basis for URCA to levy a 4% surcharge on late payments;
- URCA acts only as a billing and collecting agent for the Government and has been directed by the Government that payment plans must not be considered; and
- URCA is not the appropriate body to consider this matter. The industry is free to make representations to the Minister responsible for the Electronic Communications Sector.

URCA notes the proposals expressed by BTC regarding the fee schedule and sees no justifiable reason to amend the Fee Schedule as suggested by BTC. The National Radio Spectrum Plan (ECS06/2010, issued 12 March 2010)¹ at section 4.1.1 already provides a non-exhaustive list of the criteria for categorizing spectrum into premium and standard spectrum. In responding to BTC's concern about impromptu re-categorisation of spectrum, BTC is reminded that URCA has a statutory duty to consult with affected parties on any future re-categorization of standard spectrum into premium spectrum, and consideration would be given to allow licensees sufficient time to migrate.

¹ Available at www.urbahamas.bs.

3.6 Spectrum Fee

SRG

SRG contends that charges for spectrum for 2010 and 2011 are not reflective of fees levied by URCA's predecessor (PUC).

URCA's Proposed Further Action/Comments

This is a confidential matter and thus URCA offers no further comment in this document.

3.7 URCA's Budget

All respondents were concerned in the increases in the overall URCA budget. BTC claims that communications licensees are paying the cost of training for other utility sectors. On this matter BTC drew inferences from the MOU between URCA and the Nova Scotia Utility and Review Board (NSUARB) and a short visit to Canada by an executive member of URCA.

URCA's Response

URCA notes the comments on the budget being excessive and placing burdens on licensees. URCA is mindful that it has to be an efficient and effective regulator and offer value for money. There is the addition of new responsibilities (broadcasting, competition) which adds to the higher costs (through advisory costs) during the first 16 months. In addition, URCA has outlined an ambitious agenda, reflecting the concerns of many licensees to address long-standing regulatory issues as quickly as possible.

Some increases in cost categories (for example staff costs) have been offset by reduction in other areas (for example professional advisory costs). However, one of the bigger increases in costs without a corresponding off-set are the costs associated with the delegation by the Government to URCA of representing The Bahamas in regional and international organizations – the URCA budget includes in excess of \$100,000 in country memberships to the ITU² and the CTU³, and additional costs of representing the country at various meetings of these organisations throughout the year.

Despite this, the overall URCA budget translated to approximately 1.1% of relevant turnover and used as the basis for collecting URCA licence fees. URCA has previously provided a comparison of its fees, as a percentage of relevant turnover, in its Final Determination on Class Licences, Exemptions and Types of Fees (ECS 24/2009). This showed that the annualized URCA fee of 1.1% of relevant turnover was neither unreasonable nor excessive compared with either regional or other small-island regulators.

² International Telecommunication Union

³ Caribbean Telecommunications Union

Furthermore, with the development and publication of the first year of Key Performance Indicators, relevant information will be used to target particular areas for improvement, including cost-reduction.

Finally, since professional advisory costs for regulatory expertise were such a high percentage of overall costs in 2010, the organisation published a Request for Proposal (RFP) for professional services to pre-qualify a panel of advisors by subject matter expertise. URCA plans to use the results of the pre-qualification to select advisors for specific projects or undertake a more focused project tenders process with pre-qualified firms. It is expected that following this process, the costs of external advisors can be reduced yet further. A similar process is expected to follow suit for non-regulatory advisors in 2011.

It should be noted that when URCA requested BTC to identify where BTC draws inferences that communications licensees are paying for the training of URCA in other utility sectors, BTC was not in a position to elaborate further on this. URCA has a statutory duty to ensure that it allocates costs to each of the regulated sector and will do so when called upon to regulate other sectors. The short visit to Canada was beneficial to the general understanding of utility regulation. However, outside of that, the MOU is largely a proactive measure whose full use will be extracted in the future eventuality of regulation of other sectors.

3.8 Impact of Fund Transfer to the Government

CBL has noted that the URCA Act was amended in 2010 to allow for the transfer of \$5.9 million to the Consolidated Fund. As there was no discussion with stakeholders regarding this matter, CBL believes URCA's final plan should contain a detailed accounting of its finances, including the source and disposition of any funds transferred from URCA to the Government, including the justification for the transfer, the impact of transfer on URCA and the level of the operating licence fees going forward.

URCA's Response

The URCA Act dissolved the PUC and transferred net assets of the PUC to the Authority. At July 31, 2009, the PUC held cash on hand and at banks totaling \$6,408,504 and had a surplus (net assets) of \$6,290,160. The Government apparently had not intended for the cash (or that portion that materially exceeded the surplus) to be transferred to URCA, and expected URCA to use the provisions of the URCA Act which allow the Authority to borrow up to \$1,000,000 to finance itself to the extent necessary. However, the cash was not extracted prior to the dissolution of the PUC and, since the URCA Act did not empower URCA or the Government to simply transfer the funds to Government, Parliament enacted the Utilities Regulation and Competition Authority (Amendment) Act, 2010. This was assented to on 22 December 2010 and deemed to have come into force on 1 August 2009, and provided for the transfer to the Consolidated Fund of The Commonwealth of The Bahamas the sum of \$5,910,000 from the net assets of the PUC. Consequently, subsequent to the amendment to the URCA Act, URCA has transferred \$4.31 million to the Government, with the remainder \$1.6 million as a liability that URCA will meet over a period yet to be agreed with the Government. This is largely a cashflow issue and it is not expected to

impact on the level of URCA licence fees going forward. This information is further disclosed in URCA's 2010 audited financial statements which are part of the 2010 Annual Report.

Prior to this amendment, URCA had invested in a new spectrum monitoring system, in order to effectively and efficiently discharge its duties as the national spectrum management authority, on behalf of the Government, which collects 100% of the spectrum fees. This investment totaled \$1.8 million.

3.9 Sector size

BTC

BTC would like to know whether the \$460 million mentioned on page 3 (section 1.3) of the consultation reflects the widespread use of non-regulated services (e.g., skype, Vonage, Magic Jack) in the Bahamian market.

URCA's Response

The figure is based on information available to URCA and does not include revenues generated by unlicensed and licence exempt operators of electronic communications services.

3.10 Light Touch Regulation

BTC continued to argue that URCA has been "heavy handed" and disproportionate in its approach to regulation of BTC. BTC complains that the framework on retail pricing does not accord with Objective 24 ("light touch regulation") of the ECS Policy, and urges URCA not to unduly restrict the commercial freedom of communications providers and apply a "light touch" regulatory approach to the sector.

In commenting further on the consultation, BTC stated that:

- the retail pricing rules are onerous, some of the rules might not be fit for their purpose, amongst others;
- it is the consensus amongst "*...all international advisors/experts that BTC is overly regulated in the extreme particularly in its price regulated rules and that URCA is overbearing in its preferred application of Section 8(1)(h) of the Comms Act 2009 which, given URCA's reliance on section 8.1 (h) will ultimately be challenged by operators as to the limits and restrictions that must be applied to the Section, inclusive of URCA's invasive approach to an operator's confidential information.*" and
- it is unaware of any benchmarks established by URCA to determine when market forces are to be relied upon.

Alongside the comments above, BTC urges URCA to:

- amend its vision statement to reflect the principle of “light touch regulation” in the ECS Policy;
- undertake a review of the pricing rules, as it is in the interest of URCA and BTC to ensure that for all practical purposes, the application of the rules takes into account the need to efficiently utilize resources on both sides; and
- in the absence of established thresholds/benchmarks “...URCA should refrain from making inaccurate statements”.

URCA’s Response

URCA believes BTC’s comments and its suggested change to URCA’s vision statement would be inappropriate. URCA does not accept that it has been intrusive in relation to BTC or any other operator’s information (whether confidential or not) and notes that BTC has provided no evidence of this in its response to the consultation. URCA asserts that relevant and timely information about the services and products provided in the electronic communications services sector is critical to the effective carrying out by URCA of its regulatory responsibilities. URCA will therefore continue to make reasonable and timely requests for information when and to the extent required to inform its deliberations on any regulatory matter.

URCA acknowledges BTC’s comments on “light-touch” regulation. However, URCA is of the view that the comments made by BTC and its interpretation of “light touch” regulation, are self-serving, not in the interest of competition, and inconsistent with the principles of best practice regulation and the framework for sector competition and regulation in The Bahamas. One of the principal motivations for the sector reforms undertaken in The Bahamas has been the need to create the right conditions for “...competition to flourish to the benefits of consumers and the nation as a whole.”⁴ This principle is enshrined in two core objectives of both the ECS Policy and the Comms Act⁵:

- *“to promote investment and innovation in electronic communications networks and services;*
- *to encourage, promote, and enforce sustainable competition; “*

Objective 24 of the ECS Policy provides that URCA:

*“...should, **where consistent with the core objectives [emphasis added]**, apply light touch regulatory approach to the electronic communications sector and not unduly restrict market entry, nor commercial freedom of communications providers.”*

⁴ “A Consultation Paper on the Issues and Options for Reform of the Regulatory Framework for the Communications Sector in The Bahamas” issued 5 December 2008 and available at [http://btcprivatisation.com/uploads/Public-Consultation\[2\].pdf](http://btcprivatisation.com/uploads/Public-Consultation[2].pdf).

⁵ Paragraph 12(c) and Section 4(a)(iii), respectively.

The above makes it clear that a “light touch regulatory approach” is appropriate only if it is “consistent with the core policy objectives.” This means that where URCA believes that market forces alone are unlikely to achieve any of the core objectives, it must impose appropriate regulatory measures to ensure achievement of those objectives.

International experience suggests that at the outset of the liberalization process *ex ante* regulatory initiatives are essential in creating the right conditions for entry and competition. New entrants must be assured that relevant safeguards are in place to create a level playing field for sustainable competition to flourish amongst existing and new competitors. In this respect, URCA’s approach to regulation in The Bahamas is no different from other jurisdictions in the context of BTC’s mobile exclusivity and the existence of licensees with Significant Market Power (SMP) in other markets. URCA is satisfied there exist licensees in The Bahamas who have the ability to act in a manner that is contrary to the core objectives of the ECS Policy and the Comms Act. For this reason and in keeping with international experience, it has been necessary for URCA to impose regulatory measures to protect those objectives in an efficient and proportionate manner. As electronic communications is a dynamic industry, URCA will continue to monitor developments in the sector, on a going forward basis, and will implement changes that are consistent with the core objectives.

URCA is surprised by BTC’s professed lack of knowledge in relation to URCA’s framework which determines when market forces are to be relied upon. URCA’s approach has been documented and published and this should have been known to BTC. URCA now refers BTC to Section 4 of the March 2009 Position Paper regarding types of obligations on BTC and CBL⁶ and section 3.5 of URCA’s letter to BTC dated 22 April 2010. The framework consists of four steps:

- Define the objective – market failure identification;
- Identify options to address the objective;
- Impact analysis – cost, benefits and risks; and
- Assess impacts and identify preferred solution.

Each step is described in more detail in the March 2009 Position Paper. The framework is applied to markets determined to be susceptible to *ex ante* regulation in order to determine the nature and scope of the appropriate obligation(s), if any, to be applied to the relevant SMP licensee. The framework will evolve over time to reflect industry experience, amongst others.

BTC’s specific criticisms of the pricing rules and urging for their review have been noted. URCA does not accept that the pricing rules are onerous or that they inhibit BTC from responding to changing circumstances. For the period 22 April to 31 December, 2010 URCA processed close to a dozen BTC requests for temporary price changes and new service applications, most of them relating to non-competitive mobile services – these applications are hardly an example of a market with changing and competitive circumstances. Further, BTC has not demonstrated that its compliance with the pricing framework has imposed an unreasonable financial burden on the company.

⁶ ECS 07/2010 also available at www.urbahamas.bs.

The pricing framework was designed to ensure that SMP licensees have the ability to respond to changing circumstances and incentivize them to operate in a pro-competitive manner, while protecting the interests of persons in The Bahamas in relation to electronic communications services. These objectives are not mutually exclusive and are consistent with one or more core objectives of the Comms Act, including the objective “to encourage, promote and enforce sustainable competition ...” (s. 4(a)(iii)).

Accordingly, URCA does not believe the points raised by BTC warrant any immediate revisions to the pricing framework. URCA believes that the framework was and remains appropriate for its purpose, and before any review it should be given time to assess how it functions. Appropriate revisions may be reasonable over time as stakeholders get more comfortable with the level of interaction, compliance and analysis. BTC is assured that its comments will be given adequate consideration at such time as a review of the regulations is undertaken by URCA, which review will be scheduled in URCA’s programme of work as appropriate based on other pressing commitments.

BTC has expressed a desire to be regulated under a system of price cap regulation. In URCA’s view, ideally price cap regulation would be the preferred method of price control for BTC. URCA’s rationale on using rules-based regulation in the initial phase of the new regulatory framework (as opposed to price caps) was originally presented in the Retail Price Regulation Consultation on 17 June 2009. At that time, the notion of an Interim Pricing Framework was explained and driven by the onerous information requirements associated with price caps, and informed by similar experiences from the rest of the Caribbean region.

As a matter of fact, BTC’s response agreed with this approach, as evidenced by its submission dated 31 July 2009, with the need for such an approach before the implementation of price caps. Whilst BTC may since then have changed its position on this, URCA draws BTC’s attention to the very onerous key information needed in order to impose price caps – a detailed business and cost model for the regulated services for the duration of the cap. For example, if a price cap is introduced for 3-5 years, this requires revenue, volume, cost, elasticities and projected market share information and so forth. Evidence of URCA’s interaction with BTC on granular cost and other information relevant to the development of price cap indicates that the information requirements would severely hinder the migration to a price cap regime. Additionally, URCA was reticent to move to price cap given that the timing and certainty of privatisation has been unclear for the last two years and only recently has this become clear. Had URCA adopted a price cap 12-18 months ago, it would have been on the basis of sub-optimal information, and uncertain market and liberalisation scenarios – all in all, likely to create regulatory uncertainty and subject to a high risk of significant errors.

Even now, whether BTC is able to confidently develop a business plan for the next 3-5 years that have the detailed cost, volume, revenue and other information remains to be seen. In the event that there is clarity on this, URCA remains open to the possible need to migrate to price caps.

3.11 Other Regulatory Matters

3.11.1 Number Portability

CBL

It believes that URCA's goal should be to have a fully functioning number portability system in place no later than Q4 of 2011, as the implementation of the service is paramount to the expansion of competition in the sector.

URCA's Response

URCA has noted CBL's comments and proposals with respect to the implementation of number portability. It is recognized that number portability can be a key enabler of competition and generate significant benefits for customers. As such, number portability is a regulatory matter of public significance, thus requiring proper and meaningful consultation and engagement with stakeholders. It was stated in the consultation document that URCA intends to engage stakeholders on this issue during Q1 of 2011. Based on the outcome of those engagements, URCA will advise on next steps.

3.11.2 Infrastructure sharing

CBL

It would like URCA to clarify what it means by 'infrastructure sharing' since there is no single definition of the term. CBL also noted that any consultation involving unbundled local loop and other wholesale access obligations must await the outcome of a full market review.

URCA's Response

Without prejudice, the term 'infrastructure sharing' includes for example, unbundled local loop sharing of towers, masts poles, antennae mounting, ducts, duct chambers or other similar civil engineering or works structures, which bear, carry or route any signal carrying or processing elements of a network.

The intent was to issue a comprehensive policy paper on all types of infrastructure sharing, including sharing of towers and masts. However, it was never URCA's intent to mandate unbundled local loop or any other similar access obligations as part of the consultation on infrastructure sharing.

Given the proposed extension in the exclusivity period for mobile services the need for such a consultation is no longer a top priority for URCA in 2011.

3.11.3 Methodologies for Market Review

CBL

CBL expressed support for URCA's planned consultation on a methodology for market reviews.

URCA's Response

The consultation will define URCA's approach to market definition, and techniques/criteria to identify operators with SMP. It is scheduled for Q2 of 2011 and URCA looks forward to the active and constructive involvement of all stakeholders in the process.

3.11.4 Full Market Review

CBL

CBL expressed surprise at URCA's plan to hold a consultation on operators with SMP in call termination during Q2 of 2011. It considers URCA's timing to be premature and urges the regulator to defer the project until 2012 the earliest. CBL commented that the full market review should await the finalization of a methodology for market reviews. In any event, CBL maintains that the first round of market reviews should focus on whether the markets in which it has been deemed to have SMP were properly defined and assessed in line with the approved methodology, amongst other things.

URCA's Response

Comments raised by CBL in connection with URCA's proposal to hold a consultation on operators with SMP in call termination have been noted. URCA does not consider its proposal to be either premature or unprecedented. The timing of the consultation is informed by experiences from other markets and URCA's desire to secure the interests of persons in The Bahamas in relation to electronic communications services.

URCA agrees that a full market review must await publication of a final methodology for assessing SMP. URCA will consult with the industry on the markets to be covered in the first round of market reviews.

Given the characteristics of call termination, URCA does not believe that publication of a final methodology prior to assessing SMP or dominance in call termination is absolutely necessary. Because of the perceived risk of excessive charging and URCA's desire to secure the interests of persons in The Bahamas in relation to communications services, URCA's intention was to fast-forward the consultation. However, URCA has decided to reschedule the consultation on call termination until the methodology for assessing SMP has been established. In the meantime, URCA will monitor interconnection negotiations and, if necessary, will use its *ex post* powers to intervene in any cases where OLOs may be engaging in anti-competitive behaviour.

3.11.5 Enforcement of Licence Obligations

CBL

CBL strongly urges URCA to include a major initiative to detect and control the unlawful provision of electronic communications services without a proper licence so as to protect consumers and ensure a level playing field for licensed operators and potential entrants.

URCA's Response

URCA acknowledges the points raised by CBL. URCA takes seriously its responsibility to ensure compliance with the licensing regime and other regulatory measures. To that end, URCA continues to monitor and enforce compliance with the Comms Act and other relevant documents. Also, URCA has bolstered its monitoring and enforcement capabilities through investment in valuable spectrum equipment. At the same time URCA encourages and welcomes the assistance of the industry and stakeholders to bring enforcement issues to URCA's attention.

3.11.6 Cellular Exclusivity

CBL

It would like to know whether URCA recommended a three year exclusivity period for mobile services.

CBL supports the introduction of competition in mobile services by means of an MVNO.

URCA's Response

URCA does not have jurisdiction over the Sector Policy. As CBL is undoubtedly aware the Sector Policy is the purview of the Minister responsible for the electronic communications sector.

URCA was not part of the negotiating team for the BTC privatization exercise and neither did URCA offer any recommendation on exclusivity.

URCA considers the introduction of competition in mobile services by means other than issuing spectrum licences for mobile voice services to be contrary to the spirit and intent of the Government's policy to which URCA must adhere.

3.11.7 Wholesale Access to Television Services

BTC continued to argue that CBL should provide wholesale access to CBL's pay television services.

URCA's Response

URCA consulted extensively with BTC and other licensees on this issue and arising from those engagements, CBL is not required to offer OLOs wholesale access to its pay television services. Again, the rationale for URCA's decision is in the public domain and is known to BTC. URCA now refers BTC to Section 3.1.7 of the March 2009 Position Paper regarding types of obligations on SMP licensees and section 3.6 of URCA's 22 April 2010 letter to BTC.

3.11.8 Universal Service

BTC urges URCA to establish a Universal Service Fund and recommends that this should parallel the discussion on an efficiency study for BTC. The company is doubtful about URCA's willingness and effectiveness to address Universal Service Obligations (USO) in the sector, and further notes that the industry is yet to have sight/visibility of URCA's recommendations on universal service. It urges URCA to consider an efficiency study of the other SMP operator with USO.

URCA's Response

URCA notes BTC's comments and responds as follows:

- there are numerous challenges in implementing the transitional provisions of the Comms Act relating to universal service, hence the need for a new and transparent approach using the ongoing provisions of the Act;
- URCA has prepared a comprehensive set of recommendations on universal service policy;
- URCA will consult with Government on its recommendations on universal service policy; and
- URCA proposes to engage the industry on universal service during Q2 of 2011. This is dependent on receiving greater clarity and direction from the Government on various aspects of universal service policy.

URCA has noted BTC's recommendation for an efficiency study of the other SMP operator with universal service obligations.

4. CONCLUSION AND NEXT STEPS

As this is URCA's second draft Annual Plan, it is a learning experience for the industry and URCA. For this reason, URCA really appreciates the feedback received from respondents on the draft Annual Plan. With time and experience, URCA expects to improve and refine its future draft Annual Plans. URCA has amended its Plan accordingly and published the Final Annual Plan.

As in accordance with section 41 of the URCA Act, URCA will arrange at least one oral hearing to present the Annual Plan and Annual Report and allow questions from interested parties to be answered. URCA will publish the date and time for the oral hearing in the media and on its website.