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CORRIGENDUM

The general public is hereby advised that *the Electronic Communications Sector Policy* published in the *Extraordinary Gazette (A)* dated 5th April, 2011 is hereby repealed and replaced with the new *Electronic Communications Sector Policy* printed immediately following this Corrigendum in the *Extraordinary Gazette (A)* of the same date.

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OFFICE OF THE PRIME MINISTER

**ELECTRONIC COMMUNICATIONS
SECTOR POLICY**

**Published by:
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PREFACE

This Sector Policy dated 6th October, 2009:

- outlines the regulatory structure for the electronic communications sector to operate under;
- sets out the Government's objectives and vision for the sector in The Bahamas and further liberalisation of the sector; and
- sets regulatory priorities for URCA to implement.

The policies expressed in this document are embodied in the new legislation recently enacted:

- the Communications Act 2009 ("Comms Act");
- the Utilities Regulation and Competition Authority Act 2009 ("URCA Act"); and
- the Utilities Appeal Tribunal 2009 ("UAT Act").

It should be noted that references to "electronic communications" and "communications" are used interchangeably and refer to those services covered and defined by the Comms Act.

INTRODUCTION

- 1 The Government is aware that the current electronic communications services and infrastructures in The Bahamas are not meeting today's demands and are unlikely to be able to meet future demands. Therefore, the Government has introduced a wide-ranging reform of the electronic communications sector which embraces convergence between different parts of the sector and introduces competition across all service lines within the period covered by this Policy Document.
- 2 This document sets out the Government's policy for the electronic communications sector for the next three years. This period will be marked by substantial changes to both the regulatory and commercial landscape in the sector in The Bahamas. Over the next three years, this policy will see The Bahamas move forward substantially in the provision of improved choice, quality and value for money in electronic communications services.
- 3 The Government is committed to the process and to the objectives set out in this document and has recently passed new legislation enabling these to materialise.
- 4 Importantly, the Government has undertaken extensive consultation involving both the public and industry stakeholders, along with workshops for industry participants, to develop the new legislation and regulatory framework. It has established clear obligations of transparency, proportionality and open consultation processes for the new sector regulator to ensure the detailed framework is developed in dialogue with all stakeholders.

OBJECTIVES AND VISION FOR ELECTRONIC COMMUNICATIONS IN THE BAHAMAS

Government's Policy Objectives

- 5 **Electronic Communications form an essential part of the backbone infrastructure supporting the commercial and social progress of the Bahamian economy. Increasingly, access to affordable communications facilities determines the economic activity of individual residents. Those not connected are not empowered: personally, socially and economically. Connectivity facilitates learning, communication and trade. This means, for example, making sure children are connected to the internet and the information and education services it can provide. It also means creating commercial and regulatory structures in which the sector will be encouraged to increase coverage and accessibility of a wide range of communications services.**

- 6 **The Government wants to ensure that the electronic communications sector continues to support the development of individuals and commercial organisations in The Bahamas to engender economic growth and fuel our competitiveness as a location for multinational companies to establish their international headquarters and operations.**

- 7 **One significant development in electronic communications is the convergence between previously distinct parts of the sector, including between fixed and mobile telecommunication services and between broadcasting, cable TV, telecommunication, TV over the Internet and other means of distributing digital content. This policy and the reform initiated by the Government therefore created a converged regulatory framework, which is overseen by a converged regulatory and competition authority.**

- 8 **To achieve these goals, the Government sets out in this document its policy for the electronic communications sector, striking a balance between, on the one hand, the need to regulate the sector to safeguard consumer rights while preventing anticompetitive behaviour, and on the other, the desire to provide incentives for investment in new technologies and services and to open the sector up for competition to bring variety and choice to all communications users in The Bahamas.**

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

- 10 **At the centre of the Government's communications policy are the interests of Bahamian residents, individually and collectively through continued economic growth and stability. All policies for the electronic communications sector take root in the interests of the residents and the national economy.**

- 11 It is important that governments and regulators work with the industry to bring innovation and progress to society overall. This is of particular importance to relatively small countries like The Bahamas.
- 12 This document describes the Government's sector policy and what it considers to be priorities to support the achievement of its objectives. The Government's objectives are summarised below:
- (a) to enhance the efficiency of the Bahamian communications sector and the productivity of the Bahamian economy;
 - (b) to promote investment and innovation in communications networks and services;
 - (c) to encourage, promote and enforce sustainable competition;
 - (d) to promote the optimal use of state assets, including radio spectrum;
 - (e) to further the interests of persons in The Bahamas (resident individuals and companies) in relation to electronic communication matters and in particular to enhance the social well-being of residents of The Bahamas and the inclusiveness of Bahamian society by:
 - promoting affordable access to high quality communications services in all regions of The Bahamas;
 - maintaining public safety and security;
 - contributing to the protection of personal privacy;
 - limiting public nuisance through communications;
 - limiting any adverse impact of communications services and networks on the environment; and
 - promoting availability of a wide range of content services which are of high quality;
 - (f) to encourage the development of public electronic communications services which are responsive to the requirements of users (both individuals and businesses) and which provide its users with choice, innovation, efficiency, quality and affordability; and
 - (g) to ensure that electronic communications services enable The Bahamas to remain internationally competitive and increase their international competitiveness, particularly in those areas such as tourism and international business where The Bahamas traditionally excels.

Liberalisation

- 13 Liberalisation and competition in the provision of electronic communications services is a critical pre-condition for achieving the Government's objectives and to this end the Government intends gradually to expand the areas within the sector where competitors are able to enter the markets and compete with the existing providers. Supporting continuity of service and adopting a fair attitude to existing providers of communications is important to the Government and is working with existing and future providers to drive the benefits from electronic communications to the maximum for The Bahamas. An important part of this process is also the privatisation of BTC, which would separate the Government from the control of electronic communications services offered by BTC.
- 14 A new standardised licensing framework applies to all providers of electronic communications services and networks. This means that once a licensee has been issued an operating licence it will be able to compete across the entire range of the fixed electronic communications sector (subject to safeguards in the form of SMP¹ Obligations). A spectrum licence will be necessary for wireless services.
- 15 Although superficially attractive, The Government does not believe it would serve the medium to long terms interests of The Bahamas to introduce competition in all parts of the sector immediately. Therefore a progressive schedule of liberalisation will be established during which existing providers are able to prepare for competition and which provides a transparent framework for potential new providers of communications services in The Bahamas regarding when they may enter the markets for different communication services.
- 16 The Government intends to introduce further competition into the fixed communications markets now that the Comms Act has come into force, taking into consideration the need to ensure as level a playing field for all as possible. Specific provisions have been designed to safeguard against existing operators entering new markets in an anticompetitive manner.
- 17 The Government intends to introduce competition in the cellular communications markets subject to the timetable set-out in paragraph 50.

Content Regulation and Public Service Broadcasting ("PSB")

- 18 The converged regulatory framework covers broadcasting and the Government believes that a review should be undertaken to discuss and define how provision of content services should be regulated in The Bahamas. The review should cover the regulation of content; the extent and funding of Public Sector Broadcasting services and the role of the Broadcasting Corporation of The Bahamas.

¹ SMP = Significant Market Power, which is a regulatory status indicating that Licensees are able to behave to an appreciable extent independently of customers and competitors and thus can price excessively or otherwise behave in an anticompetitive behaviour without the fear of losing profitability.

- 19 The Comms Act sets out the high level priorities that should be applied in the regulation of content, but leaves the details to be developed in consultation with all interested parties and to be updated from time to time when required to reflect new delivery methods as well as new content development sources including user generated content.
- 20 PSB, as currently provided by ZNS, is defined as broadcasting which is intended to achieve a public benefit (broadcasting services as a means of information, education and entertainment and to develop the services to the best advantage of The Bahamas), rather than broadcasting for purely commercial concerns.

Consumer Protection

- 21 Protection of the interests of consumers and residents is at the core of the Government's policy for the sector. The Government is putting into place several initiatives in the interest of consumers including:
- increasing competition in the sector and through that improving the choice, price and quality of service available to consumers and residents;
 - specific measures protecting the rights of consumers when contracting with licensees for the provision of electronic communications services; and
 - implementing complaint handling and dispute resolution procedures.

Sector Regulation

- 22 The Government has included its core objectives for the electronic communications sector in the Comms Act. The sector regulator, the Utilities Regulation and Competition Authority ("URCA"), should exercise its powers and duties with the overriding priorities of achieving these core objectives.
- 23 This means that URCA will primarily represent the residents and consumers of The Bahamas and protect their interests through the application of its powers as provided through the Comms Act and the URCA Act.
- 24 URCA should, where consistent with the core objectives, apply a light touch regulatory approach to the electronic communications sector and not unduly restrict market entry, nor the commercial freedom of communication providers.
- 25 URCA is independent of the Government and is accountable for its budget and actions in a transparent framework of legal provisions and published policies and regulations. URCA is tasked with establishing processes and procedures that ensure consistency, transparency and proportionality of its actions.
- 26 The Government believes that a strong, well staffed and respected regulator will reduce the regulatory uncertainty that has previously characterized the electronic communications markets in The Bahamas.

- 27 Prior to the regulatory reform, regulation of electronic communications in The Bahamas was split between a number of regulators and this caused inconsistency of regulation and regulatory uncertainty.
- 28 URCA is designed to be a modern converged regulator with responsibilities and powers spanning the entire electronic communications spectrum, including fixed and mobile telecommunications, broadcasting, Cable TV and other electronic communications services. The regulatory principles applied are consistent and transparent regardless of the services offered by a licensee.
- 29 The Government believes that a credible regulator will assist in encouraging further investment in this sector and the wider Bahamas.
- 30 It is the Government's intention that this Sector Policy should provide guidance to URCA and to stakeholders as to the way in which the Government wishes URCA to implement the various regulatory measures which it has been empowered to carry out. To the extent that the new regime confers specific powers on the Minister, such as the power to determine the method of allocation of premium spectrum band (as provided in the Communications Act), this Sector Policy is intended to provide guidance as to the way in which the Government intends that these powers should be exercised.
- 31 The new regime provides URCA with effective powers to regulate the electronic communications sector. URCA is able to intervene by imposing fines or other measures including the revocation of licences, if operators breach the terms of their licences or the relevant laws. At the same time, it is paramount that URCA is accountable for its decisions. Explicit and robust safeguards for parties affected by enforcement decisions will ensure that decisions of URCA can be challenged both by customers and licensees.
- 32 To this end, the Government is in the process of setting up The Utilities Appeals Tribunal which will serve as the first instance of appeal of decisions by URCA. This will ensure that appeals are considered by a combination of competent legal professionals and technical sector experts, reflecting the technical complexities arising in detailed sector regulation appeals.
- 33 As the market becomes increasingly competitive, the intention is that URCA will exercise less ex ante (i.e. forward looking prescriptive determinations) regulatory control and place a greater emphasis on its general competition enforcement powers to ensure that it achieves and maintains the objectives set out in the Comms Act.

Government's Role

- 34 The Government will not participate in regulatory activities and URCA will exercise its powers and duties independently. However, there are some aspects for which the Government needs to maintain control, these include:
- The allocation of scarce state assets (such as spectrum);

- Social policy (including the scope of Universal Service Obligations, and public service broadcasting); and
 - The development of up-to-date and relevant sector policy to be renewed every three years.
- 35 For each of these activities, the Government intends to consult with URCA as the sector experts. Further, the Government will be guided by its policy objectives as set out above and in the Comms Act.
- 36 In particular, The Government will establish the method for the allocation of premium spectrum for the provision of new cellular and wireless services. With respect to premium spectrum, the Government will retain control of the allocation process, including determining the rules for any allocation (providing that such determination will comply with the requirements set-out in section 26(6) of the Comms Act).
- 37 In order to maximise transparency it is the Government's intention that any Government Minister or other official responsible for any communications provider in which the Government has any form of ownership or to which the Government provides funds, are separate and distinct from the Minister responsible for the electronic communications sector overall.
- 38 It is important that as the markets are liberalised and competition increases, the Government's social objectives with respect to electronic communications are safeguarded. This is typically achieved through a Universal Service Obligation (USO) which can address both geographical reach of services and the nature and pricing of services to be provided. The Government has defined the scope of Universal Service Obligations in the Communications Act. URCA is responsible for the enforcement of the Universal Service Obligations as well as setting up any funding arrangements necessary.
- 39 The Government has identified the need to impose USOs in the telecommunications markets and has designated BTC as the USO provider for telecommunications services and CBL as the USO provider of Pay TV and Internet services.

URCA'S PRIORITIES

- 40 In order to deliver the benefits of the new regime as soon as possible, the Government considers that the following tasks ought to be addressed as a matter of priority and within the period of this Sector Policy.

Implementing Internal Procedures and external guidelines to allow the proper functioning of URCA

- 41 URCA shall set up its internal procedures and external guidelines to allow it to function properly under the terms of the Comms Act and the URCA Act.

- 42 In particular, URCA should be in a position to exercise its regulatory and competition law enforcement powers effectively in the shortest possible timeframe. Whilst the Comms Act provides the framework within which URCA is expected to operate, it is vital that URCA sets up internal procedures and time-limits to deal, in particular, with complaints and to respect the tight deadlines that will apply in the case of merger control.

Processing of Licence Applications and Licence Reviews

- 43 Now that the Comms Act has come into force, existing licensees can apply for a new standard operating licence, class licence or exemption as relevant to the licensees' individual activities. It is important that URCA processes these as efficiently as possible.
- 44 Further, for those licensees who do not apply for a new licence, the Comms Act automatically converted existing licences to individual licences under the new legislation (keeping all existing licence terms intact) and URCA must now review those licences and make any necessary amendments to convert the licences to fit into the new framework.

Interim SMP Determinations and SMP Obligations

- 45 As soon as possible URCA should issue the critical SMP obligations associated with the interim SMP determinations. It is vital that this takes place as quickly as possible as any licensee determined to have SMP must comply with the basic SMP obligations imposed before the licensee is allowed to enter new markets as provided for under the new standard licensing system.
- 46 Under the Transitional Provisions of the Comms Act, the following are designated as having SMP in the respective markets.

Market	Fixed Voice ²	Fixed High Speed Data	Mobile Voice and Data	Pay TV
SMP	BTC	CBL	BTC	CBL

National Spectrum Plan

- 47 Spectrum is a valuable resource which is naturally limited in supply. It is an essential component of many electronic communications services, including cellular services and broadcasting services. It is also likely that in the future, new services will be developed in The Bahamas which require spectrum. Spectrum must be managed to avoid undue interference between competing services and to

² This market is intended to include the full product set delivered over BTC's fixed network including both voice and data services.

ensure that it is allocated in an efficient way. Where valuable spectrum is allocated, the Government will seek to balance the desire to maximising revenue to the Government with the benefit of the economy as a whole, with the need to encourage innovation and investment in electronic communications networks and services.

- 48 Effective spectrum management is necessary to ensure that The Bahamas derives the most benefit from wireless services. URCA is developing and plans to publish a national spectrum plan in consultation with the Government.
- 49 The Government recognises that there may be a need for claw back and/or redistribution of spectrum currently used by licensees either based on existing spectrum allocations or without a formal allocation. It is important that URCA exercises its powers in this regard as quickly as possible as uncertainty in this aspect could cause confusion in the market and may deter or delay investments in innovative networks and services.

Cellular Liberalisation

- 50 The liberalisation of cellular services shall be subject to the following:
- (a) the Minister shall not before the third anniversary of the relevant date (i) determine the rules relating to the award of any second cellular licence or (ii) directly or indirectly carry out any external process (including, without limitation, by way of public consultation) to exercise its functions described in section 30(1) with respect to the granting of the second cellular licence, and
 - (b) a third cellular licence will not be issued before the fifth anniversary of the relevant date³.

Market Reviews

- 51 URCA has established the processes and principles it will deploy when undertaking market reviews. This is subject to a transparent process including consultation with interested parties.
- 52 Further, URCA has commenced formal market reviews. The interim market definitions and SMP determinations become rebuttable after 12 months and will be subject to more detailed market reviews to be conducted by URCA.

Universal Service Obligation ("USO")

- 53 URCA needs to establish draft Regulations that implement the Government's USO policy as set out in the Communications Act. URCA shall consult

³ For the purposes of paragraph 50, "cellular licence" and "relevant date" shall be as defined in the Comms Act.

interested parties on its proposed USO Regulations prior to submitting these to the Government for approval and enactment.

- 54 The implementation of the USO policy must ensure that no person in The Bahamas who today benefits from electronic communications services provided under current USO and similar arrangements is left without service and that the services offered are no less than what is currently provided.
- 55 Once approved, URCA shall implement the Regulations in a transparent and proportionate manner and set-up any necessary funding mechanisms as required and as provided for in the Communications Act.

Content Regulation and Public Service Broadcasting ("PSB")

- 56 URCA should, as soon as reasonably practicable, conduct a public consultation on:
- the extent of content regulation, to be mandated by way of publication of Codes of Practice as more particularly envisaged under the Comms Act;
 - the provision of PSB in order to ensure that the scope of PSB services reflects the interests of the residents of The Bahamas;
 - the best way to fund PSB services to ensure the continued competitiveness of services in the best interest of Bahamian residents; and
 - the continued role of the Broadcasting Corporation of The Bahamas under the new regime.
- 57 Upon consideration of this consultation, URCA shall:
- issue one or more Code(s) of Practice for content regulation under the terms of the Comms Act;
 - determine the extent of PSB services to be made available in The Bahamas and the creation of any PSB fund; and
 - make recommendations to the Government on the implementation of a legislative framework to amend the current governance provisions in the Broadcasting Act as these relate to the Broadcasting Corporation of The Bahamas.
- 58 In specific relation to content, it is the intention of the Government that URCA shall monitor the effectiveness of any existing codes of conduct and policies. Should it be considered necessary, URCA will introduce new regulations and codes of conduct to ensure the protection of viewers (especially minors). These regulations may cover the compliance of quality standards in programmes, the control of advertising, sponsorship and teleshopping, fairness and privacy and

other matters for the protection of the Bahamian residents. It is not the intention that URCA should perform a censorship role involving pre-approval of content.

- 59 The regulatory regime should enable entry of new providers into the provision of content and broadcasting services in The Bahamas.

Consumer Protection

- 60 URCA will monitor the effectiveness of the consumer protection regulations and where necessary introduce new regulations and codes of conduct to enhance consumer protection. URCA will also require that all communications licensees establish standard complaints procedures for responding to customer complaints and that they set out those dispute resolution procedures that are available to customers.
- 61 As a means of further protection for consumers, URCA will have the ability to regulate or prohibit the use of communications networks to provide unsolicited calls. In exercising this power, URCA will be in a position to reduce or eliminate the annoyance, inconvenience and anxiety that may be inflicted upon consumers.
- 62 URCA will also monitor the effectiveness of the existing codes of conduct and policies to protect cellular phone services users, especially children, and will regulate the sector and introduce new codes should the current codes and policies prove to be ineffective. This obligation will be of increasing importance to URCA as cellular phone use is widespread among children and an increasing percentage of them are accessing internet content via mobile handsets.
- 63 Additionally, URCA will actively promote public awareness campaigns to inform customers of their rights and options.

DURATION

- 64 This Sector Policy shall remain in effect for up to 3 years from the date of its issuance.
- 65 Amendments to this Sector Policy can be made during its term (a) in accordance with the Comms Act or (b) on a proposal by URCA and subject to the Minister's approval in accordance with the terms of the Comms Act in the case of unexpected changes of circumstance and/or to take account of technological advances and the evolution of the liberalised markets.