



# **FINAL DETERMINATION**

## **CONTENT REGULATION: ALLEGED BREACH OF THE COMMUNICATIONS ACT BY THE BROADCASTING CORPORATION OF THE BAHAMAS**

**Issue Date: 15 January 2013**

**UTILITIES REGULATION & COMPETITION AUTHORITY**

UBS Annex Bldg., East Bay Street | P.O. Box N-4860 Nassau, Bahamas | T 242.393.0234 | F 242.393.0153 | F 242.393.0237

[www.urcabahamas.bs](http://www.urcabahamas.bs)

## Final Determination

This Final Determination is issued by the Utilities Regulation and Competition Authority (“URCA”) pursuant to section 99 of the Communications Act, 2009.

### WHEREAS:

The Broadcasting Corporation of The Bahamas (“the Licensee”) was on 23 November 2009 issued with a Class Operating Licence Not Requiring Registration (“the said Licence”) by URCA to provide Free Broadcast Services as defined in the said Licence;

Section 52 of the Communications Act empowers URCA to issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in The Bahamas and section 53(1) of the Communications Act empowers URCA to issue codes of practice that are to be observed by licensees providing audiovisual media services in The Bahamas, pursuant to which URCA has issued the “Content Regulation: Code of Practice for Content Regulation” (the “Content Code”) [URCA document reference number ECS 06/2012], on 2 March 2012;

Section 59 of the Communications Act empowers URCA to impose a fine under section 109 of the Communications Act on any person who fails to comply with any Regulatory or Other Measure issued by URCA under Part IX of the Communications Act;

Clause 2.1(1) of the Content Code stipulates that: *“The Licensee is responsible for ensuring compliance with this Code, whether pre-recorded or live, regardless of whether it has delegated such responsibility to its programming personnel or other agents as part of its day-to-day business.”*

Clause 4.2(1) of the Content Code states that: *“The Licensee shall not broadcast information about any person or undertaking or any event which is incorrect, untrue or misleading, and which the Licensee knew, ought to have known, or would have discovered through reasonable investigation, to be incorrect, untrue or misleading.”*

Clause 6.8 of the Content Code states, among other things, that:

- “(1) While a political advertisement or political broadcast may oppose a political party or candidate, it may not include material which defames or slanders a political party or candidate.*
- (3) A political advertisement or political broadcast may not contain any material which may reasonably be anticipated to expose the Licensee to legal liability.*

- (5) *Notwithstanding that the content of a political advertisement or political broadcast is normally the responsibility of the relevant candidate or political party, Licensees are required to fully comply with the relevant provisions of this Code, as with any other programme or advertisement. Licensees should apply these rules in accordance with the relevant provisions of this Code.*
- (6) *Licensees broadcasting political advertisements and political broadcasts are encouraged to seek legal indemnities from candidates and political parties against defamation, copyright and similar legal risks.*
- (8) *A Licensee accepting a political advertisement or political broadcast from a candidate, political party or other person or entity for broadcast shall satisfy itself that such advertisement or programme does not: (a) contravene the provisions of this Code, the Constitution or any law then in effect in The Bahamas."*

Clause 7.1(4) of the Content Code states that: *"No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer"*.

Condition 1.4 of the Licensee's Class Operating Licence Not Requiring Registration requires the Licensee to comply with the Conditions of the Licence, any schedules to the Licence, any Regulatory and Other Measures and the provisions of the Communications Act;

On 2 May 2012, the Attorneys for the Rt. Hon. Perry G. Christie ("Mr. Christie"), Attorney at Law, Member of Parliament for the Centreville Constituency and the Leader of the Official Opposition in Parliament at the time, namely the Progressive Liberal Party ("PLP") submitted a complaint to URCA alleging that the Licensee was contravening the provisions of the Content Code by broadcasting a paid political advertisement of the Free National Movement ("FNM") in the following terms:

*"Ten years ago Perry Christie led the most scandal ridden government in our history and now a foreign oil company wants to drill for oil in The Bahamas. They are paying Perry Christie, Brave Davis and Jerome Gomez to help them. Christie admits he was hired because of his government position. When asked about the scandal he answered, "Trust me." Sorry Perry, we won't be fooled again. Same Perry Christie, same corrupt PLP."*

At the end of the subject political advertisement, the following words appeared in bold text: **"PERRY CHRISTIE CORRUPT PROGRESSIVE LIBERAL PARTY"**.

Mr. Christie's Attorneys contended that the words in the advertisement in their natural and ordinary meaning alleged:

- that Mr. Christie's association with an oil company which is seeking to drill for oil in The Bahamas is "corrupt" "scandalous" and not to be trusted;
- that Mr. Christie's response to the allegations concerning his association with the said oil company, to the effect that he was to be trusted, was untrue, and merely an attempt to "fool" the public;
- the subject advertisement concluded with an apparent warning to the public that Mr. Christie cannot be trusted as he is the same "corrupt" Mr. Christie that is associated with the same "corrupt" Progressive Liberal Party;
- that the allegations in the subject advertisement that Mr. Christie's association with an oil company is "scandalous" "corrupt" and not to be trusted are untrue and disparage Mr. Christie in his office as an Attorney, a Member of Parliament and as the Leader of the Official Opposition; and
- that the allegations constitute a grave and malicious slander and libel of him as there is nothing corrupt, scandalous and or untrustworthy about Mr. Christie's past association with the subject oil company which past association has been legal, above-board and free of any corrupt, scandalous and/or untrustworthy dealings.

On 3 May 2012, URCA notified the Licensee that it was carrying out an investigation to determine whether the Licensee had contravened any of the provisions of the Content Code and required the Licensee to provide URCA, pursuant to Clauses 2.4(2), (3) and (7) of the Content Code, with a video and audio recording of the entirety of the advertisement submitted by the FNM and broadcast on ZNS-TV. URCA also issued an INTERIM ORDER to the Licensee pursuant to section 96(1) of the Communications Act and Clause 10.9(22) of the Content Code directing the Licensee to immediately cease and desist from broadcasting on its television station the subject advertisement, due to the possibility of serious or irreparable damage to Mr. Christie while URCA undertook its investigation of Mr. Christie's complaint. The Interim Order was limited in time to 7 May 2012 being the period of time that URCA expected to require in order to complete its investigation into this matter.

On 11 May 2012, URCA notified the Licensee of URCA's preliminary position that the subject advertisement might be defamatory and thereby in breach of the Content Code in the following respects:

- (i) The use of the word “scandal” in the sentence in the subject advertisement that states “When asked about the scandal he answered, ‘Trust me’”. Given the natural and ordinary meaning of the word “scandal” and the Licensee’s ultimate responsibility under Clause 2.1(1) for ensuring compliance with the Content Code, the Licensee was asked to justify the use of this word in the subject advertisement based on the statements made in the preceding sentence or preceding two sentences.
  
- (ii) The allegation involving the text in bold at the end of the subject political advertisement: “PERRY CHRISTIE           CORRUPT           PROGRESSIVE LIBERAL PARTY”. Given the placement of the word “CORRUPT” in the subject advertisement and the Licensee’s ultimate responsibility under Clause 2.1(1) for ensuring compliance with the Content Code, the Licensee was asked to justify that the placement of the word in the subject advertisement was not referring to Mr. Christie and thereby created in the minds of viewers and listeners the inference that he is corrupt.

The Licensee in its response to URCA on 16 May 2012 stated that *“the use of the word ‘scandal’ can be justified based on the statements made in the preceding two sentences as they are matter of fair comment”* and refer to *“... a reputation that the Progressive Liberal Party was the subject of an international article “Nation for Sale” ... concerning corruptions, drugs, money laundering”,* resulting in a Commission of Inquiry in the 1980s to restore the country’s reputation. *“More recently there were other incidences of improper conduct by party officials concerning governance and improper use of power with respect to the Korean Boat affair and the salacious relationship between the late porn star Anna Nicole Smith and the PLP’s Minister of Immigration and the fast tracking of her permit ... which give rise to the issue of trust and the non resolution of a number of these ‘scandal’ allegations.”* Consequently, *“the statements in the advertisement can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark or observation ... based ... on matters that are in the public arena and of public interest.”*

The Licensee also stated in its response that *“the licensee can justify that the placement of the word ‘corrupt’ in the subject advertisement is not referring to the Rt. Hon. Mr. Perry Christie and does not create in the minds of the listeners that he is corrupt in and of himself”* as *“the word ‘corrupt’ respectfully refers to the Progressive Liberal Party and the questionable conduct of some of its members. For example, the Bahamian public was arguably unaware that senior principals in the PLP were paid consultants for an oil company interested in drilling for oil in The Bahamas. This gives rise to the question of undue influence since there was a likelihood that the same principals could form the next government of the Bahamas ... and as a public broadcast station, the public’s interest was paramount and all matters thereto.”*

URCA, in its deliberations, noted that despite the Licensee's contention that the allegations in the subject advertisement against Mr. Christie were justifiable for reasons given by them, the Licensee did not in its response offer any apology for its alleged breach of the Content Code or indicate what, if any action, it had taken to ensure future compliance by its staff with the provisions of the Content Code regarding political advertisements.

On 22 October, 2012, URCA:

1) Notified the Licensee of the following:

- a) that the Licensee committed a breach of section 53(1) of the Communications Act 2009 and Condition 1.4 of the Licensee's Class Operating Licence Not Requiring Registration through:
  - i. the reasonable deductions, inferences or conclusions that can be drawn from the use of the word 'scandal' in the subject advertisement, based on the statements made in the preceding sentence or preceding two sentences, is to imply that it was a 'scandal' for a foreign oil company to pay Perry Christie, Brave Davis and Jerome Gomez to help the company and/or it was a 'scandal' for Mr. Christie to admit that he was hired to help the company because of his government position, is thereby, without more, "incorrect, untrue or misleading" under Clause 4.2(1) of the Content Code and/or "misleading or deceptive or likely to mislead or deceive" under Clause 7.1(4) of the Content Code; and
  - ii. that the reasonable deductions, inferences or conclusions that can be drawn from the placement of the word 'corrupt' between the words 'Perry Christie' and 'Progressive Liberal Party' at the end of the subject advertisement are/were corrupt (i.e., Perry Christie and the Progressive Liberal Party) and is thereby "incorrect, untrue or misleading" under Clause 4.2(1) of the Content Code and/or "misleading or deceptive or likely to mislead or deceive" under Clause 7.1(4) of the Content Code.
- b) that the Licensee may wish to make representations on any matter contained in the Preliminary Determination and it may do so in writing to URCA, to be received by URCA by no later than 21 November 2012;
- c) that URCA would consider any representations made by the Licensee and shall make its final determination no later than 21 December 2012;
- d) that URCA may request from the Licensee and any other affected party such additional information as is reasonably required to make a final determination;

- e) that the Licensee may exercise such other rights and remedies to which it may be entitled under law;
- 2) Enclosed a copy of a Draft Order that URCA would be minded to issue should the Licensee fail to remedy the aforementioned breaches.

The Licensee, in accordance with the Preliminary Determination, made representations to URCA by way of letter dated 1 November 2012, received by URCA on 6 November 2012. In its letter the Licensee informed URCA that it accepted full responsibility for the breach and would comply with the directives in the Draft Order to broadcast a statement of URCA's findings and an apology to Mr. Christie on its nightly newscast, "Bahamas Tonight", between the hours of 7:00 p.m. to 7:30 p.m. The Licensee further enclosed the following statement and apology:

*"On the 1<sup>st</sup> and 2<sup>nd</sup> day of May 2012, ZNS TV broadcast a paid political advertisement from the Free National Movement (FNM) implying that the Rt. Hon. Perry Christie and the Progressive Liberal Party (PLP) are or were corrupt.*

*That on the 2<sup>nd</sup> day of May 2012, the Rt. Hon. Perry Christie lodged a complaint with URCA claiming that the allegations constituted a grave and malicious slander and libel of himself.*

*That URCA found that the FNM's paid political advertisement broadcast by the Broadcasting Corporation of the Bahamas on ZNS TV breached Clause 4.2(1) of the Code of Practice for Content Regulation otherwise known as the Content Code issued by URCA on the 2<sup>nd</sup> March 2012, which prohibits the broadcasting of information of any person that is incorrect, untrue or misleading and that the Political advertisement also breached clause 7.1(4) of the Content Code which prohibits advertisements from being misleading or deceptive or likely to mislead or deceive.*

*That the Broadcasting Corporation of the Bahamas hereby deeply and sincerely apologises to the Rt. Hon. Perry Christie for any harm that may have been caused to him in his capacity as the Leader of the Progressive Liberal Party (PLP), as a Member of Parliament or as an Attorney-at-Law due to this incorrect untrue and misleading information that was broadcast on the 1<sup>st</sup> and 2<sup>nd</sup> day of May 2012."*

On 14 November 2012, URCA replied to the Licensee in writing and advised that the proposed apology to the Rt. Hon. Perry Christie and statements of URCA's findings were consistent with Clauses (1) and (2) of the Draft Order, and that the Licensee should provide URCA with a recording of the actual broadcast of the apology and statements of URCA's findings. URCA further informed the Licensee that the broadcast should occur within five (5) business days of the letter.

The Licensee submitted to URCA on 21 November 2012 a recording of the broadcast of the said apology and statement of URCA's findings which was aired during the nightly newscast, Bahamas Tonight, between the hours of 7:00 p.m. to 7:30 p.m. on 19 November 2012.

**THEREFORE** URCA, having considered the Licensee's representations, broadcast of an apology to its viewers and statements of URCA's findings on 19 November 2012 **HEREBY DETERMINES THAT:**

The Licensee has remedied the said contraventions of section 53(1) of the Communications Act 2009 and Condition 1.4 of the Licensee's Class Operating Licence Not Requiring Registration. Accordingly, URCA has not issued an Order concurrently with this Final Determination.

**Dated the 15<sup>th</sup> day of January 2013**



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Kathleen Riviere-Smith  
**Chief Executive Officer**