



# **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**

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## 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 on 2 March 2012 the “*Content Regulation: Code of Practice for Content Regulation*” [URCA document reference number ECS 06/2012] (the “Content Code”);

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 3.1(2) of the Content Code which provides in part that: “*... Licensees shall seek to avoid the broadcast of content which would be considered by the general public in The Bahamas to be harmful, abusive, offensive, discriminatory, or otherwise contrary to the standards of taste and decency which generally obtain in Bahamian society.*”

Clause 5.2(1) of the Content Code provides in part that: “*Licensees shall not broadcast offensive language that has obscene or vulgar connotations outside the watershed unless it is limited and justified by the context of the programme...*”

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;



The Progressive Liberal Party (“PLP”), in the run-up to the Parliamentary General Elections held on 7 May 2012, contracted with the Licensee to broadcast a live political rally from Clifford Park in New Providence for the evening of 4 May 2012.

Between 4 and 7 May 2012, several persons in New Providence and Abaco who had been watching the broadcast submitted complaints to URCA alleging that while PLP Leader the Rt. Hon. Perry Christie was mounting the stage at the rally to make a political address, the electricity went off and within seconds thereafter someone shouted out the words

which words were broadcast live by the Licensee thereby breaching the Content Code by broadcasting offensive language.

URCA notified the Licensee on 7 May 2012 that URCA 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 PLP rally broadcast on 4 May 2012.

URCA reviewed a recording of the live broadcast and ascertained that during the broadcast, at about 2 hours 37 minutes 19 seconds into the broadcast, while PLP Leader the Rt. Hon. Perry Christie was mounting the stage to make a political address, the electricity went off and within seconds thereafter, someone in the stage area could be heard quite clearly shouting “F---”, which words were broadcast live by the Licensee. Subsequently, the broadcast audio was lost for a few minutes and when it was restored, the Licensee’s commentator made no effort to apologise to the viewing audience for what had happened or to disassociate the Licensee from the offensive remark.

URCA wrote to the Licensee on 6 June 2012 requiring it to explain how the broadcast of the identified offensive language complied with, or was justified under, Clauses 2.1(1), 3.1 and/or 5.2(1) of the Content Code. Additionally, URCA required the Licensee to explain or justify its inaction in neither apologising to the viewing audience for what had happened nor disassociating the Licensee from the offensive remark and to advise URCA on what steps it had taken or proposed to take to avoid future occurrences of a similar kind.

The Licensee in its response to URCA on 16 June 2012 stated that:

- (i) it never wishes to broadcast content which is harmful, abusive, offensive, discriminates or are otherwise contrary to the standards of taste and decency as outlined by International Standards and as outlined in Clause 3.1(2) of the Content Code;
- (ii) with regard to Clause 2.1(1) of the Content Code, it always and will continue to insist that content providers comply with the Code. Unfortunately during the live broadcast, when the main electrical power source blew, it threw the entire event into darkness and caused panic with the principal producers of the live broadcast

and the Broadcasting Corporation's staff who were taking the live feed from another company. The Licensee stated that normally the entire broadcast would go off-air, but during this broadcast the Licensee used an uninterrupted back-up power system and regrets not being able to catch the offensive words uttered by an unknown person in the vicinity of an open microphone, such person not being a member of the Licensee's staff;

- (iii) it does not have a delay system in place for television broadcasts as it does for radio broadcasts as the cost of such a system for television is fairly expensive. The Licensee stated that their producer and anchor-person unfortunately did not hear the offensive language that was broadcast and failed to make the immediate apology as might have been expected by the audience, which they sincerely regretted;
- (iv) regarding Clause 5.2(1) of the Content Code, the broadcast of the offensive language occurred two hours into the programme at 10:37:19 PM which the Licensee considered to be during the watershed period of 9:00 PM to 5:00 AM;
- (v) it did not condone or seek to justify the offensive language uttered by the unknown person on 4 May 2012 as it relates to Clauses 2.1(1) and 3.1(2) of the Content Code but considered Clause 5.2(1) of the Content Code as moot in this matter. The Licensee stated that it intends to reinforce with its staff the need to insure greater vigilance with regard to the mentioned clauses of the Content Code and the entire document (which has already been distributed to relevant staff) so that they are familiar with its contents to ensure that appropriate measures are known for all programmes and that immediate steps should be taken to allay any concerns of our viewing audience should any such occurrence happen in the future. The Licensee said it will continue to seek to broadcast quality programmes that are acceptable to the viewing public and in no way wishes to deviate from the Content Code.

URCA, in its deliberations, noted that despite the Licensee's contention that this compliance failure resulted from a combination of technological and/or human errors, the Licensee had not broadcast an apology to viewers to explain or justify its inaction in the situation that occurred on 4 May 2012 or disassociated itself from the offensive remark.

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 by having:



- i. broadcast the words " " during the programme on 4 May 2012 and that the word " " and derivatives of this word are generally considered by Bahamian audiences to be among the most offensive language and otherwise contrary to the standards of taste and decency which generally obtain in Bahamian society; and
  - ii. thereby failed to comply with and/or contravened the provisions of Clause 2.1(1) of the Content Code in that the Licensee was responsible for the broadcast of offensive language on 4 May 2012. Notwithstanding that the Licensee was taking its live feed of the political broadcast from another production company does not exculpate the Licensee from ensuring compliance with the Content Code regardless of whether the Licensee had delegated that responsibility to another party or the contracting party has contracted another party to handle some aspect of the Licensee's broadcast; and
  - iii. thereby failed to comply with and/or contravened the provisions of Clause 3.1(2) of the Content Code in that the Licensee, in broadcasting the words " " during the programme on 4 May 2012 broadcasted content which the general public in The Bahamas considers to be offensive or otherwise contrary to the standards of taste and decency which generally obtain in Bahamian society; and
  - iv. failed to broadcast an apology to its viewers to explain or justify the Licensee's inaction for what happened on 4 May 2012 or disassociate itself from the offensive remark.
- b) that the Licensee may make representations on any matter contained in the Preliminary Determination in writing to be received by URCA no later than 21 November 2012;
  - c) that URCA would consider any representations made by the Licensee and would 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 any other law; and
  - f) that the Licensee may take such action as it considers necessary to remedy breaches set out in the Preliminary Determination.

- 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 and would comply with the directives in the Draft Order to broadcast an apology to its viewers and statements of URCA's findings. The Licensee further enclosed the following apology and statements:

*"As a result of a complaint lodged by Television viewers in Abaco and New Providence with URCA on the 7<sup>th</sup> May 2012, URCA has decided that the broadcast of Profanity by the Broadcasting Corporation of the Bahamas breached Clause 3.1(2) 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 requires ZNS-TV to avoid broadcasting content which the General Public in the Bahamas consider to be offensive or otherwise contrary to the standards of taste and decency which generally obtain in Bahamian society, and;*

*The said Broadcast also breached Clause 2.1(1) of the Content Code which makes the Broadcasting Corporation of the Bahamas responsible for ensuring compliance with the Content Code, regardless of whether the Corporation has delegated its responsibilities to its programming personnel or to others.*

*The Broadcasting Corporation of the Bahamas deeply and sincerely apologizes to its viewers for the breach of broadcasting standards and will take every and all effort to ensure that such breach does not occur in the future."*

On 14 November 2012, URCA replied to the Licensee in writing and advised that the proposed apology to the Licensee's viewers 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 statements of URCA's findings which was aired during the Licensee's nightly newscast, Bahamas Tonight, between the hours of 7:00 p.m. to 7:30 p.m. on 20 November 2012.

**THEREFORE** URCA, having considered the Licensee's representations, broadcast of an apology to its viewers and statements of URCA's findings on 20 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**

A handwritten signature in blue ink, reading "Kathleen Riviere-Smith", is written over a horizontal line.

**Kathleen Riviere-Smith**  
**Chief Executive Officer**