



FINAL DETERMINATION AND ORDER

**CONTENT REGULATION: APPLICATION OF THE
CODE OF PRACTICE FOR CONTENT REGULATION
(ECS 06/2012) TO CARRIAGE SERVICES, CONTENT
SERVICES AND ON-DEMAND AUDIOVISUAL MEDIA
SERVICES AND THE APPLICATION OF MUST CARRY
OBLIGATIONS TO CONTENT SERVICES INTENDED
FOR RECEPTION BY SUBSCRIBERS OF CARRIAGE
SERVICES IN THE BAHAMAS**

ECS 11/2012

Issue Date: 29 May, 2012

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1. Introduction

1.1 This document comprises:

- a Final Determination
- an Order with an Appendix, and
- Reasons for the Determination

issued by URCA pursuant to sections 95 and 99 respectively of the Communications Act, 2009, in relation to URCA's general powers under section 52 of the Communications Act.

1.2 Section 52 of the Communications Act provides that *"URCA may by determination issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in The Bahamas"*.

1.3 Section 53(1) of the Communications Act provides that *"URCA shall issue codes of practice that are to be observed by Licensees providing audiovisual media services in The Bahamas"*.

1.4 On 2 March, 2012, following extensive public consultation, URCA issued a document titled *"Code of Practice for Content Regulation"* (URCA document reference number ECS 06/2012) pursuant to section 53(1) of the Communications Act ("the Code") consisting of a code of practice that is to be observed, and regulates the broadcasting content provided, by Licensees providing audiovisual media services in The Bahamas.

1.5 In Clause 1.3(3) of the Code, URCA gave notice to Licensees that it *"may, by determination, apply any or all provisions of the Code to persons providing content services for reception by subscribers of carriage services or by broadcasting in The Bahamas"*.

1.6 In Clause 1.4(1) of the Code, URCA gave further notice that *"Licensees that provide carriage services, content services, and on-demand audiovisual media services shall, pursuant to section 52 of the Communications Act, comply with and observe the Code to such extent as they are required to do so by URCA by determination"*.

1.7 Except where a contrary intention is expressly noted in the provisions of the Code and having regard to the widespread availability of carriage services, content services, and on-demand audiovisual media services in The Bahamas, it appeared to URCA that it would be:

- in the best interests of The Bahamas;

- necessary for the effective achievement of the objectives set out in section 4 of the Communications Act; and
- consistent with the provisions of section 53 of the Communications Act

for Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas to also comply with and observe the Code.

1.8 It also appeared to URCA that it would be:

- in the best interests of The Bahamas;
- necessary for the effective achievement of the objectives set out in section 4 of the Communications Act; and
- consistent with the provisions of section 53(2)(i) of the Communications Act

for Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas to also comply with and observe the Must Carry Obligations in the Appendix hereto requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

1.9 In making its final determination, URCA has had regard to the overarching requirement under section 5 of the Communications Act for regulatory measures to be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and nondiscriminatory.

2. Responses to the Preliminary Determination including the Draft Order and Appendix

2.1 Consistent with the procedure set out in section 100 of the Communications Act, Licensees, stakeholders and persons interested in this matter were invited on 27 March 2012 to make written representations or objections to URCA on any matter contained in the Preliminary Determination including the Draft Order and the Appendix by 5:00 PM on 27 April 2012.

2.2 At the close of the notice period for making written representations or objections to URCA on any matter contained in the Preliminary Determination including the Draft

Order and the Appendix, URCA had received written representations or objections from the following Licensees:

- The Bahamas Telecommunications Company Ltd. (BTC); and
- Cable Bahamas Ltd. (CBL) on behalf of itself and its subsidiaries, Caribbean Crossings Ltd. and Systems Resource Group Ltd.

2.3 URCA is obligated under the Communications Act to consider any representations or objections received in connection with the Preliminary Determination and must make its Final Determination no later than one (1) month after the closing date for receiving such representations or objections.

2.4 URCA duly considered the responses or objections received from BTC and CBL on matters contained in the Preliminary Determination including the Draft Order and the Appendix and, in accordance with section 100(5) of the Communications Act issues its Final Determination with an Order under section 99 of that Act together with an Appendix to the Order and URCA's responses to the written representations and objections and any further reasoning behind the Determination in sufficient detail for it to be understood and the reasons for its decision to be known.

3. Structure of the remainder of this document

3.1 The remainder of this document is structured as follows:

Section 4 Final Determination: URCA's final determination that:

- (a) except where a contrary intention is expressly noted in the provisions of the Code, Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas shall comply with and observe the Code; and
- (b) Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall comply with and observe the Must Carry Obligations in the Appendix hereto; and,

Section 5 Order: the Order that URCA has made in these proceedings requiring that:

- (a) except where a contrary intention is expressly noted in the provisions of the Code, Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas shall comply with and observe the Code; and
- (b) Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall comply with and observe the Must Carry Obligations in the Appendix hereto; and,

Section 6 Appendix to the Order: Must Carry Obligations pursuant to section 53(2)(i) of the Communications Act applicable to content services intended for reception by subscribers of carriage services, requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

Section 7 URCA's Reasons for the Final Determination pursuant to section 100(5)(c) of the Communications Act including URCA's responses to the written representations and objections received from BTC and CBL on matters contained in the Preliminary Determination including the Draft Order and the Appendix.

4. 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:

- (1) Section 52 of the Communications Act provides that *"URCA may by determination issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in The Bahamas"*.
- (2) Section 53(1) of the Communications Act provides that *"URCA shall issue codes of practice that are to be observed by Licensees providing audiovisual media services in The Bahamas"*.
- (3) On 2 March, 2012, following extensive public consultation, URCA issued a document titled **"Code of Practice for Content Regulation"** (URCA document reference number ECS 06/2012) pursuant to section 53(1) of the Communications Act ("the Content Code") consisting of a code of practice that is to be observed, and regulates the broadcasting content provided, by Licensees providing audiovisual media services in The Bahamas.
- (4) Except where a contrary intention is expressly noted in the provisions of the Content Code and having regard to the widespread availability of carriage services, content services, and on-demand audiovisual media services in The Bahamas, it appears to URCA that it would be:
 - in the best interests of The Bahamas;
 - necessary for the effective achievement of the objectives set out in section 4 of the Communications Act; and
 - consistent with the provisions of section 53 of the Communications Act

for Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas to also comply with and observe the Content Code.

- (5) It also appears to URCA that it would be:
 - in the best interests of The Bahamas;
 - necessary for the effective achievement of the objectives set out in section 4 of the Communications Act; and

- consistent with the provisions of section 53(2)(i) of the Communications Act

for Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas to also comply with and observe the Must Carry Obligations in the Appendix to the Order requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

(6) In exercise of its powers under sections 11, 13, 52 and 100(2) of the Communications Act, during the period from 27 March 2012 to 27 April 2012 URCA allowed persons with an interest in this matter including Licensees, stakeholders and the general public in The Bahamas a reasonable opportunity to comment on the proposed regulatory measure:

(a) to apply the Content Code to Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas, except where a contrary intention is expressly noted in the provisions of the Content Code; and

(b) to apply the Must Carry Obligations in the Appendix to the Order to Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

(7) At the close of the notice period for making written representations or objections to URCA on any matter contained in the Preliminary Determination including the Draft Order and the Appendix, URCA had received written representations or objections from The Bahamas Telecommunications Company (BTC) and Cable Bahamas Ltd. (CBL) on behalf of itself and its subsidiaries, Caribbean Crossings Ltd. and Systems Resource Group Ltd.

(8) URCA having reviewed the matter and considered the written representations or objections made respectively by BTC and CBL, also provides in an annexure hereto its Reasons for the Final Determination pursuant to section 100(5)(c) of the Communications Act including URCA's responses to the written representations and objections received from BTC and CBL on matters contained in the Preliminary Determination including the Draft Order and the Appendix to the Order.

NOW URCA THEREFORE, having regard to the foregoing and having considered the written representations or objections made respectively by BTC and CBL and in exercise of its powers under section 95 of the Communications Act, **HEREBY FINALLY DETERMINES THAT:**

1. In exercise of URCA's power under section 100(2) of the Communications Act to determine in relation to URCA's general powers under section 52 of the Communications Act:
 - (a) except where a contrary intention is expressly noted in the provisions of the **"Code of Practice for Content Regulation"** (URCA document reference number ECS 06/2012) pursuant to section 53(1) of the Communications Act ("the Content Code") Code, Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas shall comply with and observe the Content Code; and
 - (b) Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall also comply with and observe the Must Carry Obligations in the Appendix to the Order requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.
2. In consequence thereof, and in accordance with section 100(5) of the Communications Act, URCA also issues the attached Order in this matter under section 95 of the Communications Act together with this Final Determination.

Dated the 29 day of May, 2012.



Kathleen Riviere-Smith
Chief Executive Officer

5. Order

This Order is issued by the Utilities Regulation and Competition Authority ("URCA") concurrently with the Final Determination pursuant to section 95(1) of the Communications Act.

WHEREAS by Final Determination made on 29 May 2012, URCA determined that pursuant to section 52 of the Communications Act:

- (a) except where a contrary intention is expressly noted in the provisions of the "**Code of Practice for Content Regulation**" (URCA document reference number ECS 06/2012) issued by URCA on 2 March 2012 pursuant to section 53(1) of the Communications Act ("the Content Code"), Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas shall comply with and observe the Content Code; and
- (b) Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall also comply with and observe the Must Carry Obligations in the Appendix to this Order requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

NOW IT IS HEREBY ORDERED that:

1. Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas shall comply with and observe the Content Code; and
2. Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall also comply with and observe the Must Carry Obligations in the Appendix to this Order requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

The failure by Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas to comply with and observe the Content Code or (where applicable) the Must Carry Obligations in the Appendix to this Order or any part thereof may constitute a breach of section 59 of the Communications Act and attract the imposition of a civil penalty under section 109 of the Communications Act.

Dated the 29 day of May, 2012



Kathleen Riviere-Smith
Chief Executive Officer

6. Appendix to Order

MUST CARRY OBLIGATIONS

issued by the Utilities Regulation and Competition Authority ("URCA") pursuant to section 53(2)(i) of the Communications Act and applicable to Licensees providing Content Services intended for reception by Subscribers of Carriage Services in The Bahamas.

- (1) This Appendix to the Order contains Must Carry Obligations in pursuance of section 53(2)(i) of the Communications Act which shall apply to Licensees that provide multi-channel content services intended for reception by subscribers of carriage services in The Bahamas, and all references to Licensee in this Appendix shall be construed accordingly.
- (2) Audiovisual media services broadcast by a Public Service Broadcaster which comprise one or more complete packaged television channels are must carry services, and must be carried by all Licensees simultaneously and without alteration.
- (3) A Licensee shall, within thirty (30) days of these Must Carry Obligations coming into effect or within sixty (60) days of the date the Licensee obtains its Operating Licence under which it intends to provide content services for reception by subscribers of carriage services in The Bahamas, whichever occurs first, submit a request to the Public Service Broadcaster to carry any of its must-carry services which are compatible with the Licensee's network.
- (4) The Public Service Broadcaster must offer its specified television channels, free of charge, to the Licensee within three (3) months upon receiving a written request from the Licensee.
- (5) The Licensee shall commence its carriage of the must-carry services within three (3) months of receiving the services from the Public Service Broadcaster.
- (6) The Licensee shall bear the cost of the carriage of the must-carry services.
- (7) The Public Service Broadcaster is responsible for and shall bear the cost of delivering its signals to the Licensee in an un-encoded and compatible format.
- (8) The provisions of paragraphs (1) to (2) and (4) to (7) of this Appendix shall apply with any necessary modifications to any arrangement made before 1 September 2009 between the Public Service Broadcaster designated under section 115 of the Communications Act (i.e., the Broadcasting Corporation of The Bahamas) and any Licensee to whom the Order and this

Appendix to the Order applies until such time as URCA has made a designation under section 61 of the Communications Act.

Dated the 29 day of May, 2012



Kathleen Riviere-Smith
Chief Executive Officer

7. Reasons for the Final Determination

Respondent	Representations and Objections	URCA's Response and Reasoning
<p>BTC</p>	<p>“The Bahamas Telecommunications Company Limited (BTC) after a review of Utilities Regulation and Competition Authority's (URCA) Preliminary Determination and Draft Order on Content Regulation (ECS 11/2012) and the Authority's Final Decision on Content Regulation: Code of Practice for Content Regulation (ECS 06/2012) has no additional comments or recommended revisions to the Preliminary Determination and Draft Order.”</p> <p>“BTC notes Section 1.5 (Part 1: Interpretation Purpose and Applicability) of URCA's Final Decision on Content Regulation (ECS 06/2012) that the Authority will, in consultation with the Industry Group established in accordance with Section 55 (1) of the Communications Act, formally review the Code after it has been in effect for three (3) years. Further, if any substantive changes are needed before the review, URCA in consultation with the Industry Group will give all stakeholders an opportunity, under Section 11 of the Communications Act, to comment on any proposed changes to the Code. BTC as a stakeholder welcomes the opportunity under this Section to further engage URCA should the need arise in the future relative to the application of the Code</p>	<p>URCA thanks BTC for its response to the Preliminary Determination and Draft Order and duly notes that BTC had no comments or recommended revisions to the Preliminary Determination and Draft Order.</p> <p>URCA thanks BTC for its comments on Clause 1.5 of the Content Code and confirms that whenever any substantive changes are needed to the Code, then URCA will, in consultation with the Industry Group, give all stakeholders an opportunity, under Section 11 of the Communications Act, to comment on any proposed changes to the Code. This also accords with the overarching requirement under section 5 of the Communications Act for regulatory measures to be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and nondiscriminatory.</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	of Practice rules.”	
CBL	<p>“Universal Application of the Code”</p> <p>“URCA has decided that the Code should apply to all content services. In CBL's view it seems illogical for URCA to be in a quandary whether the code should apply to satellite services being provided in The Bahamas. The legislation and/or principle should be technology neutral. An individual Licensee should not be at a disadvantage vis-à-vis a class licensee or at a competitive disadvantage to non-licensees operating in The Bahamas. The fact that URCA is deliberating whether the sale of satellite television services in The Bahamas constitutes a ‘carriage service’ or a ‘content service’ as defined in section 2 of the Act, may be cause to pause this preliminary determination. URCA may very well consider that any person selling satellite delivered content in The Bahamas is unable to exercise editorial responsibility in order to effect compliance with the Code. This is the same argument for CBL. Further it seem incongruous that URCA is deliberating whether entities selling satellite television services in The Bahamas constitutes a ‘carriage service’ or a ‘content service’ as defined in section 2 of the Act in light of the its own statement that the code will apply to content delivered</p>	<p>URCA is not “in a quandary” about whether the Content Code should apply to satellite services being provided in The Bahamas. CBL raised this issue in the public consultation on the draft Content Code and URCA’s final decision on the subject was that URCA will, when reviewing its Licensing Guidelines during 2012, consider whether persons or companies selling satellite television services in The Bahamas constitutes a ‘carriage service’ or a ‘content service’ as defined in s. 2 of the Communications Act. URCA agrees with CBL that the legislation and/or principle should be technology neutral, and that Individual Licensees should not be at a disadvantage vis-à-vis a class licensee or at a competitive disadvantage to non-licensees operating in The Bahamas. It is precisely for these reasons that URCA gave notice in Clause 1.3(3) of the draft Content Code to Licensees that it “<i>may, by determination, apply any or all provisions of the Code to persons providing content services for reception by subscribers of carriage services or by broadcasting in The Bahamas</i>” followed by the publication of the Preliminary Determination and Draft Order. URCA considered it appropriate to resolve both the current situation of applying the Content Code to existing Licensees providing carriage services and content services as well making provision to apply the Content Code to other Licensees</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	<p>by Licensees via the internet if the Licensee targets it at persons and promotes or advertises that content within the Bahamas. URCA's statutory objective is to further the electronic communications interest of consumers in The (entire) Bahamas, it is therefore highly discriminatory for providers of the same content to be subject to different regulatory policies. This will be an unfair regulatory practice which in the day to day lives of consumers will see different content being provided by different providers for the supposedly same programming. The Codes are intended to provide definitive benefits to the broadcasting industry: a clear set of regulations that are applicable to all relevant broadcasters in The Bahamas helps to ensure a level playing field. This can lead to the promotion of competition and innovation of services.”</p>	<p>(whether Individual or Class Licensees) and non-licensees who are currently providing or might in the future provide carriage services, content services and on-demand audiovisual media services, thereby ensuring fairness, transparency and a level playing field for all such service providers. Insofar as existing Licensees (whether Individual or Class Licensees) and non-licensees providing such services are concerned, URCA considers this to be a licensing issue the resolution of which under section 11 and section 13 of the Communications Act would require a regulatory or other measure of public significance. Regulatory and other measures of this kind require public consultation and the consideration of public comments in response to the proposed measure.</p> <p>URCA considers that the fair, transparent and non-discriminatory approach to resolving the issues raised by CBL in its response is to conduct a public consultation on URCA's Licensing Guidelines to determine whether other Licensees (whether Individual or Class Licensees) and non-licensees who are currently providing or might in the future provide carriage services, content services and on-demand audiovisual media services through satellite and other services should also be required to be licensed by URCA and thereby subject to the Content Code. A decision on this issue would also fulfil one of URCA's statutory</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
		<p>objective to further the electronic communications interest of consumers in The (entire) Bahamas, and would eliminate any potential discrimination between providers of the same content (i.e., carriage services, content services and on-demand audiovisual media services) not all being subject to the same regulatory policies, thereby ensuring fairness, transparency and a level playing field for all such service providers.</p>
<p>CBL</p>	<p>“Application of the Code to Licensees providing carriage services, content services and on-demand audiovisual media services in the Bahamas”</p> <p>“URCA's proposal to apply the Code to carriage services, content services and on-demand audiovisual media services seems overly censorious given that cable programming has historically not been subject to regulation of this type whether here or abroad. It has to be borne in mind that any comparison of jurisdictions regulating content on cable television is characterized by the programmer having editorial responsibility for the contents of the programme. Over 15 years ago through the collaborative efforts of the FCC, the National Association of Broadcasters (NAB) and other industry stakeholders in the United States a Parental Guidelines (ratings guidelines) system was introduced. These</p>	<p>URCA does not consider that its proposal to apply the Content Code to carriage services, content services and on-demand audiovisual media services to be overly censorious (or censorious at all) as alleged by CBL. URCA considers it appropriate for the Content Code to ensure maximum consistency with the principles of transparency, fairness and non-discrimination in the Communications Act. URCA's proposal to apply the Content Code to carriage services, content services and on-demand audiovisual media services is consistent with the provisions of section 52 of the Communications Act which provides that <i>“URCA may by determination issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in The Bahamas”</i>. Having regard to the fact that the overwhelming majority of programming offered by carriage services, content services and on-demand audiovisual media services in</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	<p>guidelines which apply to broadcast and cable networks which was adopted by the FCC and its partners is identical to the one recommended by URCA. It is agreed that the majority of CBL's content services programming originate in the United States, the same ratings ascribed to programming in the U.S is provided by CBL and is accessible to every CBL subscriber 24 hours per day, 365 days per year on CBL's channel 5, channel Guide. Though CBL has no editorial responsibility over its content services it is confident that the use of the ratings system in conjunction with filtering technology (as is the case in the U.S) provides consumers with information to help them make more informed choices about the television programs they watch."</p>	<p>The Bahamas originates in the United States of America (USA), URCA considered that it was appropriate to model its Television Programme Classification System in Clause 5.11 of the Content Code on the ratings guidelines system currently in existence in the USA. While URCA notes CBL's contention that it has no editorial responsibility over the majority of its content services, URCA disagrees with this contention and considers that CBL retains varying degrees of editorial responsibility and control over its programming in a number of ways:</p> <ol style="list-style-type: none"> (1) CBL chooses the variety and type of channels that it offers to Bahamian consumers and the way in which those channels are packaged, bundled or tiered for subscribers; (2) CBL in choosing the channels that it offers to its subscribers also has knowledge of the types of programming broadcast by each channel that it obtains from its programme suppliers; (3) CBL can, on directions from its programming suppliers for reasons such as syndication exclusivity or copyright, or for regulatory or governmental reasons, 'blackout' (i.e., not air) specific television programming on specific channels during specific time periods. <p>URCA is, however, confident that the use of the Television Programme Classification System in Clause 5.11 of the</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	<p>“It is CBL's view that technology is available to its subscribers in the form of television sets, which allow the use of filtering mechanisms coupled with set-top boxes equipped with parental controls. This technology gives its subscribers the power of choice over which programming is suitable for their household and fulfils</p>	<p>Content Code in conjunction with filtering technology (as defined in Clause 5.11 of the Content Code and currently provided by CBL to subscribers of its carriage services, content services and on-demand audiovisual media services) provides Bahamian consumers with information consistent with the requirements of the Content Code to help them make more informed choices about the television programmes they choose to watch. Notwithstanding these observations, URCA believes that limits remain necessary regarding the type of content that is appropriate for The Bahamas, and Licensees must ensure that regardless of their sources of content, they do not exceed that which is appropriate having regard to the social environment, the Constitution and laws of The Bahamas and the Electronic Communications Sector Policy. URCA considers that CBL is already almost fully compliant with the provisions of the Content Code as regards the provision of filtering technology and programme classification systems for its non-Bahamian channels.</p> <p>URCA agrees in principle with CBL that technology is available in the form of television sets which allow the use of filtering mechanisms coupled with set-top boxes equipped with parental controls. URCA considers that if both of these technologies were concurrently available to CBL's subscribers it would give those subscribers that have both of them even</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	<p>URCA's mandate as set out in section 53(2)(a) of the Communications Act. In light of the aforementioned description of available technology the application of the Code does not seem to be consistent with light handedness or necessary for the effective achievement of the objectives set out in section 4 of the Act.”</p>	<p>greater power of choice over which programming is suitable for their household and further fulfil URCA's mandate as set out in section 53(2)(a) of the Communications Act. However, to URCA’s knowledge, CBL’s subscribers do not have both of these technologies available to them and are limited by CBL only to the use of filtering technology through set-top boxes equipped with parental controls provided by CBL as the sole means to exercise the power of choice over which programming is suitable for their household. However, URCA is aware that modern television sets are equipped with the ability to receive broadcast access services wherever they are available. Further, URCA is of the view that regardless of the ability of persons to make an informed choice about the television programmes they choose to watch, certain types of programming are inconsistent with the objectives of the Electronic Communications Sector Policy and the Communications Act, as informed by the Constitution and laws of The Bahamas. URCA considers that those categories of content should not be shown in any event or under any circumstances. In any event, and having regard to the provisions of sections 52 and 53 of the Communications Act, URCA considers that the application of the Content Code to carriage services, content services and on-demand audiovisual media services in The Bahamas is as light touch as the circumstances require and are necessary to achieve the objectives in sections 4, 5, 11, 13, 52 and 100(2) of the</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	<p>“Section 4 of the Act sets out the main objectives of the electronic communications policy. URCA omits to indicate which objective it believes applying the Code to Licensees providing carriage services, content services and on-demand audiovisual media services in The Bahamas meets. URCA considers that applying the Code to Licensees providing carriage services, content services and on-demand audiovisual media services in The Bahamas is consistent with section 53 of the Act. While section 53 relates to development of codes of practice for audiovisual media services in the Bahamas, the suitability of the Code to content services or on-demand services needs to be very carefully examined. The significant characteristic is the ability to exercise editorial responsibility. According to section 5(b)(ii), URCA should have due regard to the costs and implications of those regulatory and other measures on affected parties. Our review of each clause of the Code indicates the principal difficulty with them is that realistically we are not able comply. We think that it is important that we manage consumer expectation in this regard. CBL has been complying with the code as it relates to our local</p>	<p>Communications Act and clause 12 of the Electronic Communications Sector Policy.</p> <p>URCA considers that the objectives in section 4 of the Communications Act apply to Licensees providing carriage services, content services and on-demand audiovisual media services in The Bahamas in the same way that they apply to Licensees providing other electronic communications services and consequently URCA does not consider that it is necessary to specify any particular objective(s) when applying the Content Code to such service providers. URCA disagrees with CBL's statement that <i>“URCA considers that applying the Code to Licensees providing carriage services, content services and on-demand audiovisual media services in The Bahamas is consistent with section 53 of the Act”</i> from the standpoint that <i>“the suitability of the Code to content services or on-demand services needs to be very carefully examined”</i>. Clause 1.4(1) of the Content Code specifically states that <i>“Licensees that provide content services, carriage services or on-demand audiovisual media services shall, pursuant to section 52 of the Communications Act, comply with and observe the Code to such extent as they are required to do so by URCA by determination”</i>. Similarly where CBL states their <i>“...review of each clause of the Code indicates the principal difficulty with them is that realistically we are not able to comply”</i>, URCA's</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	<p>programming and its locally transmitted programming as it relates to CBL 12, because it has editorial responsibility and control over what is broadcasts on its own channel however, with regard to its (overseas) content services CBL reiterates that it has no editorial responsibility and control over that content and will not be able to comply with the Code in that regard.”</p>	<p>response is that Clause 1.4 and Clause 1.6 of the Content Code make clear that every clause of the Content Code does not apply to Licensees providing carriage services, content services and on-demand audiovisual media services in the Bahamas. URCA considers CBL's Cable 12 television station to be an audiovisual media service for which CBL has editorial responsibility and control over what is broadcast on that station. Insofar as CBL also provides carriage services, content services and on-demand audiovisual media services to subscribers in The Bahamas, URCA considers that CBL (and other carriage services, content services and on-demand audiovisual media services in The Bahamas, both current and future) have varying degrees of editorial responsibility and control where such service providers (i.e., carriage services, content services and on-demand audiovisual media services) are capable of signal substitution (i.e., substitution of local advertisements for foreign advertisements or substitution of other programming in the event of exclusive broadcast rights programming) and thereby exercise editorial responsibility and control over that content, or where the subject service providers are responsible for the selection, preparation and/or scheduling of programming, promotions, previews and trailers promoting programming available to subscribers on the subject service provider's own subscription service (i.e., carriage service, content service or on-demand audiovisual media service) and therefore the Content Code needs to</p>

Respondent	Representations and Objections	URCA's Response and Reasoning
	<p>“We therefore recommend that clause 1. 6 of the Code is amended to include the following clauses that will not apply to content delivered via a carriage service, a content service or an on-demand audio-visual media service. Clauses 2.1, 2.3, 2.5, 2.7; clause 3.1; clauses 4.1, 4.2, 4.4, 4.5, 4.10 - 4.12; clauses 5.7, 5.8, 5.10, 5.11; clause 7; clauses 8.1 — 8.12, 8.13(1), 8.14(2), 8.15, 8.17, 8.18 — 8.22; clauses 9.3(4) & (5).</p> <p>Clause 8.23 should be restricted to channels on which the Licensee has permission by the signal provider to alter the transmission.</p> <p>Clause 8.24 seems to go beyond URCA's mandate. There is specific legislation as well as civil and criminal remedies for infringement. We suggest that this clause is not representative of light-handed legislation and is an agenda better handled elsewhere.”</p>	<p>ensure Bahamian consumers are provided with information to help them make more informed choices about the television programmes available on such services that they choose to watch.</p> <p>Clause 1.6 of the Content Code provides as follows: <i>“The provisions of Clause 2.4, Clauses 3.2 to 3.5, Clauses 4.3, 4.6 to 4.9 and 4.13 to 4.17 and Clauses 7.1 to 7.12 of this Code shall not apply to content delivered via a carriage service, a content service or an on-demand audio-visual media service to adult persons subscribing to the service who specifically select the content in question, provided that the Licensee providing such services shall, so far as it is able to, take all reasonable steps to:</i></p> <p><i>(a) inform the adult subscriber through classifications and/or advisories as are required by Clauses 5.10 and 5.11 this Code of the nature of the programming;</i></p> <p><i>(b) ensure that an adequate parental control mechanism has been implemented in conjunction with the advisory and classification system and filtering technology set out in Clauses 5.10 and 5.11 of this Code, which enables adult subscribers to prevent access to unsuitable content by children; and</i></p> <p><i>(c) provide appropriate training, instructional materials, and assistance to subscribers regarding the use and operation of parental control mechanisms through filtering technology,</i></p>

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		<p data-bbox="1115 220 1787 289"><i>and guidelines for the maintenance of security from accidental or unsanctioned use by children.”</i></p> <p data-bbox="1115 337 1913 1341">Clause 2.1: URCA disagrees with CBL that this clause should not apply to the subject service providers (i.e., carriage services, content services and on-demand audiovisual media services) because one of the principal objectives of the clause is to make all Licensees responsible for ensuring compliance with the Content Code, regardless whether the programming is pre-recorded or live. The only potential element of ‘editorial responsibility’ arises in Clause 2.1(2) which begins with the words “<i>The Licensee’s discretion in selecting programmes ...</i>”. However, URCA does not consider this sufficient reason to amend the clause as the Content Code was not issued solely to regulate CBL but was issued to regulate other situations that URCA considers might arise as where a carriage service, content service or on-demand audiovisual service provides its own subscription service and is responsible for the selection, preparation and/or scheduling of programming available to its subscribers. Accordingly, the Content Code must balance sometimes competing objectives, such as protections for freedom of speech, privacy rights, consumer rights and rules designed to create an efficient and innovative information economy. In the absence of Clause 2.1 and other clauses objected to by CBL, URCA runs the risk that no or inadequate rules apply to the subject services for ensuring that children and parents can avoid content such as obscene or indecent programming otherwise available by subscription if they so choose.</p>

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		<p>Clause 2.3: URCA disagrees with CBL that this clause should not apply because the subject service providers retain the ability to effect signal substitution (i.e., substitution of local advertisements for foreign advertisements or substitution of other programming in the event of exclusive broadcast rights programming) and thereby exercise editorial responsibility and control over that content.</p> <p>Clause 2.5: URCA disagrees with CBL that this clause should not apply because the subject service providers retain control over selection of the specific stations or channels in the service providers' channel line-up and, as a consequence, are thereby responsible, at the very least, for providing their subscribers with sufficient information to identify each station or channel provided (for example, in electronic programme guides, in any relevant promotional material and in any accompanying printed guides). URCA considers that this requirement is also relevant in the event of complaints handling. However, in deference to CBL, URCA proposes to refer CBL's objection to this clause to the Content Regulation Industry Group for consideration as well as possible inclusion in any guidelines to the Content Code. In the interim, URCA will adopt a pragmatic and practical approach to any difficulties with complying with this clause by carriage services, content services and on-demand audiovisual media services.</p> <p>Clause 2.7: URCA disagrees with CBL that this clause should not apply to the subject service providers because, as stated above in relation to Clause 2.1 and Clause 2.3, the Content</p>

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		<p>Code was not issued solely to regulate CBL but was issued to regulate other situations that might arise as where a carriage service, content service or on-demand audiovisual service provides its own subscription service and is responsible for the selection, preparation and/or scheduling of programming available to its subscribers. Additionally, the subject service providers retain the ability to effect signal substitution (i.e., substitution of local advertisements for foreign advertisements or substitution of other programming in the event of exclusive broadcast rights programming) and thereby exercise editorial responsibility and control over that content. However, in deference to CBL, URCA proposes to refer CBL's objection to this clause to the Content Regulation Industry Group for consideration as well as possible inclusion in any guidelines to the Content Code. In the interim, URCA will adopt a pragmatic and practical approach to any difficulties with complying with this clause by carriage services, content services and on-demand audiovisual media services regarding promotions, previews and trailers over which they do not exercise editorial responsibility and control.</p> <p>Clause 3.1: URCA disagrees with CBL that this clause should not apply to the subject service providers because, as stated above in relation to Clause 2.1, the Content Code was not issued solely to regulate CBL but was issued to regulate other situations that might arise as where a carriage service, content service or on-demand audiovisual service provides its own subscription service and is responsible for the selection, preparation and/or scheduling of programming available to its subscribers. However, in deference to CBL, URCA proposes to</p>

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		<p>refer CBL's objection to this clause to the Content Regulation Industry Group for consideration as well as possible inclusion in any guidelines to the Content Code.</p> <p>Clauses 4.1, 4.2, 4.4, 4.5, and 4.10 - 4.12: URCA disagrees with CBL that these clauses should not apply to the subject service providers because, as stated above in relation to Clause 2.1, the Content Code was not issued solely to regulate CBL but was issued to regulate other situations that might arise as where a carriage service, content service or on-demand audiovisual service provides its own subscription service and is responsible for the selection, preparation and/or scheduling of programming available to its subscribers. In the absence of the clauses objected to by CBL, URCA runs the risk that no or inadequate rules apply to the subject services for ensuring that children and parents can avoid content such as pornographic, obscene, violent or indecent programming otherwise available by subscription if they so choose. URCA considers CBL's objections, if agreed to, would result in the unsatisfactory situation whereby the subject content is only regulated by generic criminal and civil laws (such as those, if they exist in The Bahamas, prohibiting the sexual exploitation of children or racial vilification) or hypothetical self-regulation by the subject service providers. However, in deference to CBL, URCA proposes to refer CBL's objections to these clauses to the Content Regulation Industry Group for consideration as well as possible inclusion in any guidelines to the Content Code.</p> <p>Clauses 5.7, 5.8, 5.10 and 5.11: URCA agrees with CBL that</p>

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		<p>Clause 5.8 should not apply to the subject service providers to the extent that the child, the crime and the news are produced outside The Bahamas and will refer the matter to the Content Regulation Industry Group for its consideration. URCA disagrees with CBL regarding Clause 5.7 for the reasons stated above in relation to CBL's objection to Clause 2.5. URCA disagrees with CBL regarding Clauses 5.10 and 5.11 as URCA considers that Clause 5.10(7) makes clear the extent to which Clauses 5.10 and 5.11 apply to content that subscribers pay a fee to receive (i.e., carriage services, content services and on-demand audiovisual media services) in order that Bahamian consumers are provided with information to help them make more informed choices about the television programmes they choose to watch. However, in deference to CBL, URCA proposes to refer CBL's objections to these clauses to the Content Regulation Industry Group for consideration as well as possible inclusion in any guidelines to the Content Code.</p> <p>Part 7: URCA agrees with CBL because Clause 1.6 of the Content Code already makes clear that Clauses 7.1 to 7.12 (i.e., all of the provisions currently in Part 7) of the Content Code do not apply to the subject service providers.</p> <p>Clauses 8.1 — 8.12, 8.13(1), 8.14(2), 8.15, 8.17 and 8.18 — 8.22: URCA agrees with CBL that none of these provisions should apply to the subject service providers but only to the extent that the subject content is generated outside of and/or relates to matters outside The Bahamas and will refer the matter to the Content Regulation Industry Group for its consideration as well as possible inclusion in any guidelines on</p>

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		<p>the Content Code.</p> <p>Clause 8.23: URCA disagrees with CBL that this clause should not apply to the subject service providers for the same reasons given in response to the objections to Clause 2.5. However, in deference to CBL, URCA proposes to refer CBL's objection to this clause to the Content Regulation Industry Group for consideration as well as possible inclusion in any guidelines to the Content Code.</p> <p>Clause 8.24: URCA disagrees with CBL that this clause should not apply to the subject service providers. 'Plagiarism' is considered to be the (dishonest) process of copying another person's work (in this case, intellectual property as described in the clause) and claiming it as one's own original work without giving credit to the creator. In the context of 'News and Factual Programmes', Clause 8.24 considers plagiarism as unacceptable behaviour and anticipates that Licensees and their broadcast journalists will honour the intellectual property of others (by giving the appropriate credit whenever they use another person's intellectual property).</p> <p>Clauses 9.3(4) and (5): URCA disagrees with CBL that these clauses should not apply to the subject service providers for reasons similar to those given in response to the objections to Clause 2.1, namely that the Content Code was not issued solely to regulate CBL but was issued to regulate other situations that might arise as where a carriage service, content service or on-demand audiovisual service provides its own subscription service and is responsible for the</p>

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		<p>selection, preparation and/or scheduling of closed captioning programming available to its subscribers. As a consequence, the subject service providers are responsible, at the very least, for providing their subscribers with sufficient information to identify each station or channel providing closed captioning (for example, in electronic programme guides, in any relevant promotional material and in any accompanying printed guides). However, in deference to CBL, URCA proposes to refer CBL's objections to these clauses to the Content Regulation Industry Group for consideration as well as possible inclusion in any guidelines to the Content Code.</p>
<p>CBL</p>	<p>“Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas to also comply with and observe the Must Carry Obligations in the Appendix”</p> <p>“CBL has since its inception broadcasts the Broadcasting Corporation of the Bahamas' station ZNS signal where it has been made available and in accordance with the cable television licence between CBL and the Government of The Bahamas dated 5 July, 1995. Broadcasting has been provided without charge. There has been no discussion on the 'must carry' provisions in the consultation conducted between 9th November and 30th December, 2011 save and except in the Statement of Results published on 2 March 2012. URCA indicates</p>	<p>URCA agrees with CBL that CBL has, since obtaining its cable television licence in 1995, retransmitted the signals of the Broadcasting Corporation of The Bahamas' (Broadcasting Corporation) television station, ZNS-TV, and in more recent times the television signals of the Parliamentary Channel without charge. URCA considers that:</p> <ul style="list-style-type: none"> (i) consistent with the best interests of The Bahamas; (ii) the effective achievement of the objectives set out in section 4 of the Communications Act; (iii) the provisions of section 53(2)(i) of the Communications Act; the situation that has existed between the Bahamas Government, CBL and the Broadcasting Corporation since 1995 regarding the implicit 'must-carry' obligations without charge of ZNS-TV and the Parliamentary Channel as part of CBL's

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	<p>that the Licensee shall bear the cost of the carriage of the must carry services. The entirely new model of regulation has imposed additional obligations on designated Licensees and we urge URCA to recognize that there is a cost for the carriage of must carry services. It would seem consistent with the new model regulation that Licensees are able to recover the cost of providing services. URCA should be consistent in requiring Licensees to absorb the cost of social policies. The obligations under section 119 and schedule 5 of the Comms. Act requires CBL to provide a multichannel line-up that includes ZNS as one of the channels. It seems outside URCA's jurisdiction or redundant to require CBL to carry the public service broadcasters signals through 'must carry' obligations."</p>	<p>channel line-up;</p> <p>(iv) the designation of the Broadcasting Corporation in section 115 of the Communications Act as a public service broadcaster; and</p> <p>(v) Condition 12 of CBL's Individual Operating Licence, the Preliminary Determination was an appropriate and proper occasion for URCA to specify fair, transparent, non-discriminatory and clear rules for Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas to also comply with and observe Must Carry Obligations requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters. Condition 12 of CBL's Individual Operating Licence states that <i>"The Licensee shall, on a direction of URCA made from time to time for the purposes of this Condition 12 broadcast or otherwise transmit any service specified in that direction."</i> Regarding the issues advanced by CBL of cost for the carriage of must carry services and absorbing the cost of social policies, URCA considers that if CBL has been carrying ZNS-TV and the Parliamentary Channel since 1995 without charge, coupled with the fact that under the Must Carry Obligations, on one hand the Licensee bears the cost of the carriage of the must-carry services, while on the other hand the Public Service Broadcaster is responsible for and bears the cost of delivering its signals to</p>

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		<p>the Licensee in an un-encoded and compatible format, URCA does not understand what additional costs CBL is contending would be incurred by them. URCA notes that CBL does not itemise or describe what additional costs it is incurring or would incur as a result of effectively formalising the existing arrangement with the Broadcasting Corporation in the form of Must Carry Obligations. URCA disagrees with CBL that because CBL is designated in section 119 and Schedule 5 of the Communications Act as the universal service provider of affordable basic television services to all populated areas and specified institutions it would be outside URCA's jurisdiction or redundant to require CBL to carry the public service broadcaster's signals through 'must carry' obligations. As URCA stated in Section 3.4 of its public consultation document entitled 'Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) under section 119 and Schedule 5 of the Communications Act 2009' issued on 30 March 2012 [URCA document reference number ECS 12/2012]: <i>"URCA does not agree that a 'must carry' obligation would be adequate to address the issues that the USO is designed to address. Generally, 'must carry' obligations require a licensee that owns and operates an electronic communications broadcast network (such as a cable television network) to transmit a licensed local free-to-air television broadcaster over its network, possibly at no expense to the local broadcaster. A 'must carry' obligation does not in and of</i></p>

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		<p><i>itself imply that the service is offered free of charge or at an affordable rate to the public by the licensed electronic communications broadcast network, nor does it address the issue of reach to remote and underserved parts of the country. In most instances the local channel is bundled with other re-transmitted channels and offered at a price to end users. URCA notes that the Comms Act addresses the issue of 'must carry obligations' as a matter for possible inclusion in a Code of Practice for broadcasters and is a separate issue from USO."</i></p>
CBL	<p>"Requirement under section 5 of the Communications Act"</p> <p>"URCA indicates that it has had regard to the overarching requirement for regulatory measures to be efficient and proportionate for their purpose and introduced in a manner that is transparent, fair and nondiscriminatory. In light of the available technology and the mandated digitization programme, it may have been more efficient and proportionate for URCA to have only applied clause 5.10. Most of CBL's programmes carry classifications and probably will comply with the requirements of the Code since it is programming from the United States. There is programming from countries other than United States in time zones other than the eastern time zone which may cause some programs to</p>	<p>URCA disagrees with CBL when it states that in light of available technology and the mandated digitisation programme, it may have been more efficient for URCA to have only relied on Clause 5.10 of the Content Code to achieve its statutory and regulatory objectives regarding content regulation. URCA considers that while Clause 5.10 would be one of the primary provisions of the Content Code affecting the providers of carriage services, content services and on-demand audiovisual media services in The Bahamas, it cannot be the sole provision and therefore the need for other clauses such as Clause 5.11 which incorporates a Television Programme Classification System similar to the one utilised in the USA and which addresses in part CBL's concerns about programmes being shown in different time zones outside of the Bahamian watershed period. Further, URCA is of the view that regardless of the ability of persons to make an informed</p>

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	<p>come outside the "watershed" period (where applicable) of the Code. Furthermore other aspects of the Code (e.g. newscast,) are outside the control of the retransmitter wherever the programming originates. We again commend to URCA its own observation during the consultation on the process for developing Codes of Practice:</p> <p style="padding-left: 40px;">While URCA envisages that new Codes would focus primarily on Bahamian-operated radio and TV services, the Working Group would need to consider how they should apply to overseas services (e.g. US television channels) that are available in The Bahamas (emphasis mine). The Group would need to be pragmatic about this, given that there is generally no practical or available means for Bahamian operators (such as Cable Bahamas) to impose any form of editorial control over programmes on overseas channels, or to be able to review programmes on those channels ahead of transmission to monitor compliance.</p> <p>The specific content related objectives identified as important to the development of a broadcasting sector must be pragmatic and achievable by a licensee.</p>	<p>choice about the television programmes they choose to watch, certain types of programming are inconsistent with the objectives of the Electronic Communications Sector Policy and the Communications Act, as informed by the Constitution and laws of The Bahamas. URCA considers that those categories of content should not be shown in any event or under any circumstances.</p> <p>URCA wishes to make clear to CBL and others that there was never any 'mandated digitization programme' as alluded to by CBL in its response. As URCA has pointed out on previous occasions, CBL was mandated as part of its Significant Market Power obligations under section 116 of the Communications Act to untie or disaggregate the retail sale of its broadband Internet services from its cable television services and offer each of them as a standalone service. URCA left it to CBL to determine the methodology by which it would comply with this obligation and, for business reasons, CBL chose digitisation, not URCA. URCA agrees with CBL that cable television systems in many countries are generally subject to lighter rules of content regulation than audiovisual media services and considers that this approach is reflected in the current Content Code. However, URCA reminds CBL that 'light touch regulation' does not mean 'no regulation at all', a fact that emerges from the provisions of section 52 of the Communications Act regarding carriage</p>

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	<p>URCA further suggested that the key themes that emerges from review of content Codes around the world, ... namely that pay-TV services — such as the bundled packages offered in The Bahamas that include overseas television channels — are generally subject to lighter rules than free-to-air services, and typically make use of ratings and parental control mechanisms.”</p>	<p>services, content services and on-demand audiovisual media services in The Bahamas.</p>
<p>CBL</p>	<p>“COMMENTS ON THE CODE”</p> <p>“In the Statement of Results issued on 2nd March, 2012 (ECS 05/2012) and amended on 19 April, 2012 (version 1.0.1) URCA indicated that the provisions of clauses 2.4, clauses 3.2 to 3.5, clauses 4.3, 4.6 to 4.9 and 4.13 to 4.17, and clauses 7.1 to 7.12 of this Code shall not apply to content delivered via a carriage service, a content service or on an on-demand audio-visual media service to adult persons subscribing to the service who specifically select the content in question, provided that the Licensees shall so far as it is able to, takes all reasonable steps to:</p> <ul style="list-style-type: none"> (a) Inform the adult subscriber through classifications and/or advisories as are required by clauses 5.10 — 5.11 [of] this Code of the nature of the programming; (b) Ensure that an adequate parental control 	<p>Most of the issues raised by CBL in this part of its submissions have been addressed and responded to by URCA in URCA's earlier responses to CBL's objections. URCA does not propose to address these issues again in this part of its response. URCA considers that it should make clear the effect of the Content Code in relation to several points raised by CBL:</p> <ul style="list-style-type: none"> (1) Where CBL is broadcasting its own programming services through its Cable 12 television station, URCA considers that CBL is providing audiovisual media services and all provisions of the Content Code apply to the operation of that television station. (2) Where CBL is retransmitting television channels and programmes purchased from overseas as well as the transmissions of local broadcasters, URCA considers that CBL can be providing a carriage service, a content service and/or an on-demand audiovisual media service and in those situations specified provisions of

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	<p>mechanism has been implemented in conjunction with the advisory and classification system and filtering technology set out in clauses 5.10 and 5.11 of this Code, which enables adult subscribers to prevent access to unsuitable content by children; and</p> <p>(c) Provide appropriate training, instructional materials, and assistance to subscribers regarding the use and operation of parental control mechanisms through filtering technology, and guidelines for maintenance of security from accidental or unsanctioned use by children.</p> <p>We have highlighted additional clauses in the Code which should not be applied. Our reason is basically that we do not have editorial responsibility. There are two aspects to the business that CBL operates under its licence issued by URCA. One aspect of the business is the channel known as Cable 12 or the Community Channel. CBL controls that channel in that it decides what will appear on the channel, it has editorial responsibility as defined by the Comms. Act. The other aspect of CBL is the retransmission of programmes purchased from overseas as well as the transmission of local broadcasters. CBL does not have the power to influence or interrupt the line-up of the programmes for</p>	<p>the Content Code will not apply to it when providing the subject services.</p> <p>(3) However, URCA considers that notwithstanding the non-application of specified provisions of the Content Code to carriage services, content services and on-demand audiovisual media services in The Bahamas, there are potential situations, both current and future, where such service providers are responsible for signal substitution (i.e., substitution of local advertisements for foreign advertisements or substitution of other programming in the event of exclusive broadcast rights programming) and thereby exercise editorial responsibility and control over that content, or where the subject service providers are responsible for the selection, preparation and/or scheduling of programming, promotions, previews and trailers promoting programming available to subscribers on the subject service provider's own subscription service (i.e., carriage service, content service or on-demand audiovisual media service) and therefore the Content Code needs to ensure Bahamian consumers are provided with information to help them make more informed choices about the television programmes available on such services that they choose to watch;</p> <p>(4) URCA considers that CBL retains varying degrees of editorial responsibility and control over its</p>

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	<p>retransmission. The absence of editorial responsibility for these channels means that compliance with certain obligations of the Code is not within our power. It is therefore our submission that these provisions should not apply to Licensees providing carriage services, content services and on-demand audiovisual media services in the Bahamas.”</p> <p>“In ECS 19/2011 URCA posed the following question in respect of audiovisual media services. We shall answer the same question in the context of applying these provisions to licensees providing carriage services, content services and on-demand audiovisual media services in the Bahamas. We have inserted comments were applicable. The term editorial responsibility means that we do not have the contractual or technical means to give effect to the clause.</p> <div data-bbox="369 1040 1083 1276" style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Question 1: Do you agree with URCA's proposals in Part 1 of the draft Code of Practice regarding definitions and interpretation, purpose of the Code, the regulatory framework, compliance with the Code and review of the Code? If not, why not? Should any other provisions be included in this Part of the Code or any removed?</p> </div> <p>URCA in its Statement of Result and of its own volition decided to 'improve' the definition of 'audiovisual media</p>	<p>programming in a number of ways:</p> <ul style="list-style-type: none"> (i) CBL chooses the variety and type of channels that it offers to Bahamian consumers and the way in which those channels are packaged, bundled or tiered for subscribers; (ii) CBL in choosing the channels that it offers to its subscribers also has knowledge of the types of programming broadcast by each channel that it obtains from its programme suppliers; (iii) CBL can, on directions from its programming suppliers for reasons such as syndication exclusivity or copyright, or for regulatory or governmental reasons, 'blackout' (i.e., not air) specific television programming on specific channels during specific time periods. <p>URCA disagrees with CBL's contention that URCA does not have the authority to include 'cable system' in the definition</p>

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	<p>service' by adding to the statutory definition 'cable system' as defined in the Copyright Act. URCA is a statutory body that has been created by Parliament and as such does not have legislative authority to alter the meaning of words that have been statutorily defined. Parliament has defined URCA's ambit and if URCA finds it wanting, then the responsible and legally permissible way to address this is by amending the legislation. Our comments are also applicable to URCA's 'improving' the definition of content service and carriage service and the amendment to clause 1.2(3) with the addition of "and on-demand audiovisual media service" to the end of section 52. It is not correct since that is not an accurate representation of section 52.</p>	<p>of audiovisual media service, carriage service, content service and on-demand audiovisual media service in the Content Code. Clause 1.1(1) of the Content Code contains the following definition of audiovisual media service: "Audiovisual media service has the meaning given in section 2 of the Communications Act, namely a service for the provision of material with a view to its being comprised in signals conveyed by means of a network which is under the editorial responsibility of the service provider of that service and includes a "cable system" as defined in section 2 of the Copyright Act, namely a facility located in The Bahamas that in whole or in part receives television broadcast signals transmitted within The Bahamas or outside The Bahamas, and diffuses secondary transmissions of such signals or programs by wires, cables or other communication channels to subscribing members of the public in The Bahamas who pay for such service." URCA stated in the Statement of Results on the draft Content Code that it had decided to improve the definitions of audiovisual media service, carriage service, content service and on-demand audiovisual media service as including a "cable system" as defined in Section 2 of the Copyright Act. URCA considers that this action was appropriate having regard to fact that the Content Code was not issued solely to regulate CBL but was issued to regulate other situations that might arise where an audiovisual media service, carriage service, content service or on-demand</p>

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	<div data-bbox="369 708 1083 906" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>Question 2: Do you agree with URCA's proposals in Part 2 of the draft Code of Practice regarding positive rules, operational and technical rules: If not, why not? Should any other provision be included in this Part of the Code or any removed?</p> </div> <p>Answer: There is generally no practical means for Licensees providing carriage services, content services and on-demand audiovisual media services to impose any form of editorial control over programmes on overseas channels, or to be able to review programmes on those channels ahead of transmission to monitor compliance. [CBL thereafter contended that Clauses 2.1, 2.3 and 2.7 each raised issues of editorial responsibility; and that it would only be able to comply with Clause 2.5 on stations that it has the permission to insert</p>	<p>audiovisual service provides its own subscription service via a cable system as defined in section 2 of the Copyright Act. URCA's powers under sections 8, 52 and 55(1) of the Communications Act are sufficiently broad to authorise URCA to make regulatory measures in the form of codes of practice "to be applicable to the content provision operations of each of those sections of the industry". In URCA's view, cable systems are a section of the content provision operations of the industry and thereby susceptible to the rules of the Content Code.</p> <p>URCA disagrees with CBL for the reasons stated above in these Reasons for Final Determination in response to CBL's objections to Clauses 2.1, 2.3, 2.5 and 2.7 of the Content Code.</p>

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	<p>advertisements but will not be able to comply with this requirement on all other stations.]</p> <div data-bbox="369 396 1083 594" style="border: 1px solid black; padding: 5px;"> <p>Question 3: Do you agree with URCA's proposals in Part 3 of the draft Code of Practice regarding underlying principles and positive rules? If not, why not? Should any other provisions be included in this Part of the Code or any removed?</p> </div> <p>[CBL thereafter contended that Clause 3.1 raised issues of editorial responsibility.]</p> <div data-bbox="369 842 1083 1076" style="border: 1px solid black; padding: 5px;"> <p>Question 4: Do you agree with URCA's proposals in Part 4 of the draft Code of Practice regarding Law and Order, Harmful and offensive content and religious programming? If not, why not? Should any other provisions be included in this Part of the Code or any removed?</p> </div> <p>[CBL thereafter contended that Clauses 4.1, 4.2, 4.4, 4.5, 4.10, 4.11 and 4.12 each raised issues of editorial responsibility.]</p>	<p>URCA disagrees with CBL for the reasons stated above in these Reasons for Final Determination in response to CBL's objections to Clause 3.1 of the Content Code.</p> <p>URCA disagrees with CBL for the reasons stated above in these Reasons for Final Determination in response to CBL's objections to Clauses 4.1, 4.2, 4.4, 4.5, 4.10, 4.11 and 4.12 of the Content Code.</p>

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	<div data-bbox="369 261 1083 496" style="border: 1px solid black; padding: 5px;"> <p>Question 5: Do you agree with URCA's proposals in Part 5 of the draft Code of Practice regarding the protection of young persons and a television programme classification system? If not, why not? Should any other provisions be included in this Part of the Code or any removed?</p> </div> <p>[CBL thereafter contended that Clauses 5.7, 5.8 and the majority of Clause 5.10 each raised issues of editorial responsibility; and stated that it was not clear in Clause 5.10(7) if the overriding standard should apply to carriage, content services and on-demand audiovisual services.]</p> <div data-bbox="369 894 1083 1162" style="border: 1px solid black; padding: 5px;"> <p>Question 6: Do you agree with URCA's proposals in Part 6 of the draft Code of Practice regarding election broadcasts and advertising, other aspects of election broadcasts and political advertisements and operational matters in elections, referendums and political broadcasts? If not, why not? Should any other provisions be included in this Part of the Code or any removed?</p> </div> <p>Answer: CBL believes that by its context Part 6 could only apply to Bahamian elections and therefore would not be applicable to the content services.</p>	<p>URCA disagrees with CBL for the reasons stated above in these Reasons for Final Determination in response to CBL's objections to Clauses 5.7 and 5.10 of the Content Code. URCA provisionally agrees to refer Clause 5.8 to the Content Regulation Industry Group the extent stated above in these Reasons for Final Determination in response to CBL's objections to Clause 5.8 of the Content Code.</p> <p>URCA disagrees with CBL that Part 6 of the Content Code only applies to Bahamian elections and therefore would not be applicable to the content services for the reasons stated above in these Reasons for Final Determination in response to</p>

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	<p data-bbox="369 396 1079 594">Question 7: Do you agree with URCA's proposals in Part 7 of the draft Code of Practice regarding advertising, sponsorship and non-programming material? If not, why not? Should any other provisions be included in this Part of the Code or any removed?</p> <p data-bbox="369 626 659 656">Answer: not applicable</p> <p data-bbox="369 899 1079 1162">Question 8: Do you agree with URCA's proposals in Part 8 [and Part 9] of the draft Code of Practice regarding accuracy and impartiality, fairness and privacy, national emergencies and disasters, miscellaneous news and factual material in news and factual programmes? If not, why not? Should any other provisions be included in this Part of the Code or any removed?</p> <p data-bbox="369 1208 1079 1367">[CBL thereafter contended that Clauses 8.1 to 8.6, 8.8, 8.10, 8.14 to 8.15, 8.17 to 8.21, 9.3(4) and 9.3(5) each raised issues of editorial responsibility. CBL also contended that Clauses 8.23(1) and (2) were restricted</p>	<p data-bbox="1121 220 1856 298">CBL's objections to Clauses 2.1, 2.3 and 2.5 of the Content Code.</p> <p data-bbox="1121 626 1877 743">URCA agrees with CBL for the reasons stated above in these Reasons for Final Determination in response to CBL's objections to Part 7 of the Content Code.</p> <p data-bbox="1121 1208 1906 1367">URCA disagrees with CBL for the reasons stated above in these Reasons for Final Determination in response to CBL's objections to Clauses 8.1 to 8.6, 8.8, 8.10, 8.14 to 8.15, 8.17 to 8.21, 9.3(4) and 9.3(5) of the Content Code.</p>

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	<p>to those channels on which they can put information and Clause 8.24(2) has to be subject to section 83(2) of the Copyright Act which allows them to broadcast over the air without permission.]”</p>	<p>In deference to some of the objections made by CBL, URCA proposes referring CBL's objections to these clauses to the Content Regulation Industry Group (CRIG) for consideration as well as possible inclusion in any guidelines to the Content Code for possible resolution as follows:</p> <ul style="list-style-type: none"> (1) any guidelines to the Content Code URCA will make clear whether a carriage, content or on-demand audiovisual media service provider would be sanctioned for initial breach of the Code by transmitting certain content for which it has no editorial responsibility and no practical way to view the content beforehand; (2) if a complaint is submitted about such content and the subject service provider or URCA finds the content to be in breach of the Content Code, the service provider would be responsible for ensuring that the particular content should subsequently be "blacked out" whenever it is rebroadcast (URCA considers this as feasible and practical, because the subject service

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		<p>providers have knowledge ahead of time of the programming schedules of all of the channels in their channel line-up); and</p> <p>(3) depending on the type of content, the subject service provider might not be sanctioned for the initial broadcast, but will be sanctioned for any further broadcasts of such content after the subject service provider or URCA has identified the content as being in breach of the Code.</p>