



Final Determination

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

WHEREAS Bartlett-McWeeney Communications Limited (“the Licensee”) was on 11 January 2010 issued with an Individual Spectrum Licence (“the Licence”) by URCA and assigned the radio spectrum frequency of 105.9 MHz to provide radio broadcast services in the Island of New Providence; and

WHEREAS section 52 of the Communications Act empowers URCA to issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in The Bahamas and section 53(1) of the Communications Act empowers URCA to issue codes of practice that are to be observed by licensees providing audiovisual media services in The Bahamas, pursuant to which URCA has issued the “*Content Regulation: Interim Code of Practice for Broadcasting Content ECS 10/2010*” (the “Interim Content Code”); and

WHEREAS section 58 of the Communications Act empowers URCA to impose regulations for the retention of sound and vision recordings of any content to which Part IX of the Communications Act applies, including the time period for which such recordings must be retained and an obligation to record and retaining the recordings of all programmes broadcast by a licensee; and,

WHEREAS 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; and

WHEREAS :

- Clause 4 of the Interim Content Code stipulates that the Interim Content Code applies to any programme or advertisement broadcast by any broadcasting station operated by a licensee;

- Clause 11(3) of the Interim Content Code requires licensees to keep taped recordings of all broadcasts for at least one hundred and twenty (120) days;
- Clause 11(4) of the Interim Content Code requires licensees to make available the originals of all recordings to URCA at the licensee's broadcasting station for inspection on notice at least 24 hours before such inspection; and
- Clause 12 of the Interim Content Code stipulates that a licensee providing programmes which are under its editorial responsibility shall not permit certain specified matters or content to be broadcast from any broadcasting station operated by the licensee; and

WHEREAS Condition 3.2 of the Licence 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; and

WHEREAS URCA having notified the Licensee on 16 March 2011 that URCA was carrying out an investigation to determine whether the Licensee had contravened any of the provisions of Clause 12 of the Interim Content Code and required the Licensee to permit URCA, pursuant to Clause 11(4) of the Interim Content Code, to inspect on 17 March 2011 at 2:00 p.m. the original recording of the entirety of programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on 24 February, 9 March and 10 March 2011 and notified the Licensee that such recordings may be required by URCA; and

WHEREAS an URCA officer having visited the Licensee's broadcasting station at Gems House, 51 Montrose Avenue, Nassau, on 17 March 2011 at 2:00 p.m. to inspect the recordings of the programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on 24 February, 9 March and 10 March 2011 and the Licensee having failed and/or refused to allow URCA to inspect the original recordings and failed and/or refused to provide URCA with the specified required recordings; and

WHEREAS URCA having further notified the Licensee by letters dated 25 March and 30 March 2011 to provide URCA with the requested recordings, failing which the Licensee would be deemed to be in breach of section 59 of the Communications Act and subject to enforcement action under section 109 of the Communications Act and the Licensee having failed to produce the programmes broadcast on 24 February and 10 March 2011 as required under the notice to the Licensee dated 16 March 2011; and

WHEREAS on 4 May, 2011, URCA:

- (a) notified the Licensee:
 - (i) of the specific obligation or obligations the compliance or contravention of which were the subject of the Preliminary Determination; and
 - (ii) specified the period within which the Licensee could make representations about the matters in the Preliminary Determination, comply with the obligations referred to in the Preliminary Determination of which it is in contravention and remedy the consequences of contraventions notified in the Preliminary Determination; and
- (b) enclosed a copy of a Draft Order under section 95 of the Communications Act that URCA would issue with the Final Determination; and

WHEREAS on 18 May, 2011, the Licensee submitted to URCA its representations or objections in connection with the Preliminary Determination as follows:

- (a) that URCA should note and take into consideration the restructuring and separation of the partnership of the Licensee;
- (b) that one of the partners was solely trying to manage and bring resolution to what the Licensee now considered has become a crisis;
- (c) that in the responding partner's opinion, she was almost alone in trying to resolve the matter;
- (d) that the responding partner had made every possible attempt within her power to comply with URCA's request;
- (e) that the responding partner was very concerned about her inability to provide URCA with the requested recordings and had consequently sought legal counsel as to how she should proceed with the host (i.e., Mr. Steve McKinney); and
- (f) that the responding partner was requesting 2 to 3 weeks to secure the benefit of legal counsel as well as a meeting with URCA to discuss preliminary considerations; and

WHEREAS URCA has considered the representations or objections received from the Licensee in connection with the Preliminary Determination and responds to them as follows:

- (a) URCA notes that the Licensee was, aside from the bare allegation, unable to point URCA to any specifics as to how or why the alleged restructuring and separation may have caused the Licensee to be unable to discharge these obligations, and as such in URCA's opinion and to URCA's knowledge, the

alleged restructuring and separation of the partnership of the Licensee has no, or no apparent, impact on the Licensee's obligation or ability to discharge its statutory, licence and regulatory obligations as specified in the Preliminary Determination.

- (b) The Licensee was initially notified on 16 March, 2011, that URCA was carrying out its investigation, proposed to inspect the originals of the specified recordings and may have required copies of the specified recordings, but to date, the Licensee has produced only one of the recordings, has failed and/or refused to allow URCA to inspect the original recordings and has failed and/or refused to provide URCA with the specified required recordings. Notwithstanding those failures and the period of time that has elapsed the Licensee is only now seeking to obtain legal counsel as to how to proceed against the host. URCA is of the opinion that, when all of these considerations are taken together, the Licensee has been more than dilatory in obtaining legal advice as to what (if any) action the Licensee might take against the host and that the Licensee has not, to date, shown or displayed any specific action on its part that would lead URCA to believe that the Licensee is making any genuine or actual effort to comply with the original notices from URCA or the Preliminary Determination beyond requesting that URCA further delay taking any action in this matter.

THEREFORE, URCA, having considered the information in its possession regarding the Licensee's repeated failure to provide recordings of the programmes broadcast on 24 February and 10 March 2011 as required under the notices to the Licensee dated 16 March, 25 March and 30 March 2011, and having considered the representations or objections received from the Licensee to the Preliminary Determination HEREBY FINALLY DETERMINES THAT:

Bartlett-McWeeney Communications Ltd. has:

- (i) failed to comply with and/or contravened the requirements of Clauses 11(3) and (4) of the Interim Content Code in respect of permitting URCA to inspect on 17 March 2011 at 2:00 p.m. or at any other time the original recording of the entirety of programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on its broadcast station on 24 February, 9 March and 10 March 2011, and

(ii) failed to provide URCA with the original recording of the entirety of programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on its broadcast station on 24 February and 10 March 2011 as required by URCA, and

(iii) failed to retain recordings of the broadcasts on 24 February and 10 March 2011,

and in each instance committed repeated breaches of sections 53(1) and 58 of the Communications Act 2009 and Condition 3.2 of its Individual Spectrum Licence and in consequence thereof URCA has issued an Order to the Licensee under section 95 of the Communications Act together with this Final Determination.

This Final Determination and the Order issued herewith relates only to the allegation that the Licensee has committed repeated breaches of its Individual Spectrum Licence by failing to comply with the requirements of the Interim Content Code. URCA has commenced an investigation to determine whether on 24 February, 9 March and 10 March 2011 the Licensee had contravened any of the provisions of Clause 12 of the Interim Content Code, and URCA will separately advise the Licensee of the progress of that investigation.

Dated this 26th day of May, 2011.



**Director of Policy & Regulation
Utilities Regulation and Competition Authority**



Order

WHEREAS by a Determination made on 26 May, 2011, URCA determined that Bartlett-McWeeney Communications Ltd. (the Licensee) repeatedly failed to comply with the provisions of Clause 11(3) and (4) of the *“Content Regulation: Interim Code of Practice for Broadcasting Content ECS 10/2010”* (the *“Interim Content Code”*) in respect of permitting URCA to inspect on 17 March 2011 at 2:00 p.m. or at any other time the original recording of the entirety of programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on its broadcast station on 24 February, 9 March and 10 March 2011, and failed to provide URCA with the original recording of the entirety of programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on its broadcast station on 24 February and 10 March 2011 as required by URCA, and failed to retain recordings of the broadcasts on 24 February and 10 March 2011, thereby committing in each instance repeated breaches of sections 53(1) and 58 of the Communications Act 2009 and Condition 3.2 of the Licensee’s Individual Spectrum Licence, which breaches continue to date.

Now, it is hereby ORDERED that the Licensee shall:

- (1) permit URCA by or before 17 June, 2011, to inspect the original recording of the entirety of programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on its broadcast station on 24 February, 9 March and 10 March 2011; and
- (2) provide URCA by or before 17 June, 2011, with the original recording of the entirety of programmes hosted by Mr. Steve McKinney and broadcast by the Licensee on its broadcast station on 24 February and 10 March 2011 as required by URCA in accordance with the Clause 11(3) and (4) of the *“Content Regulation: Interim Code of Practice for Broadcasting Content (ECS 10/2010)”*; and
- (3) in default of compliance with paragraphs (1) and/or (2) above, URCA will impose the following penalty upon the Licensee pursuant to section 95(2)(b) and section 109(1) and (5) of the Communications Act:

- (a) The Licensee shall pay to URCA by or before 24 June, 2011, a fine of five thousand dollars (\$5,000.00); and
- (b) For every day after 24 June, 2011, that the Licensee is in default in complying with paragraph (3)(a) above, the Licensee shall pay to URCA an additional daily default fine of one hundredth of one percent (0.01%) of its relevant turnover as defined in section 2 of the Communications Act until the contraventions are remedied or the fine is paid.

Failure by the Licensee to comply with this Order or any part thereof may also result in the suspension or revocation of the licence pursuant to section 109(2)(c) of the Communications Act.

Dated the 26th day of May, 2011



**Director of Policy & Regulation
Utilities Regulation and Competition Authority**