



GUIDANCE ON THE LICENSING REGIME UNDER THE COMMUNICATION ACT, 2009

GUIDELINES – ECS 15/2009

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1 INTRODUCTION TO THE LICENSING GUIDELINES

1.1 What is the purpose of the guidelines?

Any person that provides an electronic communications service or establishes, maintains or operates an electronic communications network (including any such network that requires spectrum, such as a radio station) is regulated under the Comms Act. These persons, who are referred to as “operators” in this document, must understand their obligations under the regulatory regime established by the Comms Act.

These guidelines are intended to inform operators about the licensing regime under the Comms Act, the different types of licences, how to apply for a licence, the payment of fees and how licences may be amended or revoked. These guidelines do not specifically address transition issues applicable to existing licensees, which are the subject of separate guidelines, “*Guidance on Transition to the New Licensing Regime under the Comms Act, 2009 (Guidelines – ECS 14/2009)*”. Please refer to these guidelines if you have questions about the transition period.

These guidelines outline the key features of the licensing regime that are likely to be of interest to operators. They are not intended to be comprehensive restatements of operators’ legal obligations under the Comms Act or any other legislation, they do not limit the rights and obligations of operators under the Comms Act or any other legislation. These guidelines demonstrate URCA’s thinking at 1 September 2009. URCA will continue to review the operation of the licensing regime and may publish updated guidance from time to time. If you have any comments on these guidelines, please let us know. All comments should be addressed to URCA at info@urcabahamas.bs. ***Operators should refer directly to the legislation and the conditions of their licences and if necessary, seek legal advice.***

1.2 **The structure of the guidelines**

These guidelines outline the process to be followed by operators with regard to applying for a licence, renewing a current licence or licences, payment of fees and how licences may be amended or revoked.

Any person that has a licence issued under the Comms Act must be familiar with these guidelines.

1.3 **Who to contact for additional information?**

For further assistance, please visit URCA's website at www.urcabahamas.bs. Alternatively, please contact URCA via email at info@urcabahamas.bs, via fax to (242) 323 7288 or in person at URCA's offices at Fourth Terrace East, Collins Avenue, Centreville P. O. Box N-4860, Nassau, Bahamas.

2 INTRODUCTION TO THE LICENSING FRAMEWORK

This section provides an overview of the licensing framework, including: how networks and services (including spectrum) are licensed; what licences are available; and the key features of the licences.

As explained below, the licensing regime covers **operating licences** and **spectrum licences**. Although operating licences and spectrum licences are different, there are a number of common principles followed by URCA in relation to spectrum licences and operating licences (in many cases, licensees will have both spectrum and operating licences). *Therefore, throughout this document the term “licence” refers to both “operating licences” and “spectrum licences” unless expressly specified otherwise.*

2.1 What are the objectives of the new licensing framework?

The communications regime established by the Comms Act has been developed to comply with the electronic communications policy objectives. These objectives, which are set out in full in section 4 of the Comms Act, include:

- enhancing the efficiency of the electronic communications sector and the productivity of the economy. Business and the national economy have a growing dependence on electronic communications. The regulatory regime should promote an efficient sector that would deliver consequential benefits to the economy;
- promoting investment and innovation in electronic communications networks and services;
- encouraging, promoting and enforcing sustainable competition;
- promoting the optimal use of state assets, including radio spectrum. State assets, such as spectrum, are finite and must be managed effectively;
- promoting affordable access to high quality networks and carriage services in all regions of The Bahamas;

- maintaining public safety and security;
- contributing to the protection of personal privacy;
- limiting public nuisance through electronic communications;
- limiting any adverse impact of networks and carriage services on the environment;
and
- promoting availability of a wide range of content services which are of a high quality.

2.2 What is licensed?

URCA will have the power to license certain activities (or deem them exempt from the licensing provisions). In addition, URCA may regulate non-licensable activities through regulations and codes of practice or through the implementation of standards, such as technical standards.

Which activities are licensable?

URCA will either licence or exempt the establishment, maintenance and operation of a network or provision of a carriage service, including by use of any radio spectrum [s.16(1) CA].

A carriage service is any service consisting in whole or in part of the conveyance of signals by means of a network, except in so far as it is a content service, including the provision of ancillary services to the conveyance of signals and conditional access or other related services to enable a customer to access a content service [s.2 CA].

A network is, in summary, a transmission system for the conveyance of signals, including associated apparatus, equipment, facilities, software and stored data [see s.2 CA for a full definition].

Any person that undertakes a licensable activity in The Bahamas will require a licence unless the relevant activity is exempt. See section 2.5.3 below for further information on exemptions.

2.3 **What is not licensed?**

The definition of a carriage service excludes “content services” (although it includes the provision of ancillary services that enable a customer to access a content service). Therefore, the development of content, such as television programmes, will not be licensable but the distribution of television programmes through cable, for example, will be licensable.

Other non-licensable activities covered by the Comms Act include, amongst other things, type approval of communications equipment [s.83 CA] and the distribution of unsolicited messages [s.47 CA]. Although these activities are not licensed, URCA may issue codes of practice or regulations and take enforcement action for non-compliance. Non-licensable activities are not considered further within this guidance note.

2.4 **What is the new licence structure?**

Broadly, there are two types of licences under the Comms Act. URCA may issue **operating licences** relating to the operation of electronic communications networks and services. Additionally, URCA may issue **spectrum licences** that authorise the use of radio frequencies.

A **spectrum licence** only gives the licensee permission to use spectrum frequency in a specified band. It does not give the licensee the right to provide electronic communications services or operate an electronic communications network. Conversely, an **operating licence** will authorise the licensee to offer those services or operate the network that is specified in the licence but will not give the licensee any authority to use radio spectrum. Therefore, some licensees will require both a spectrum licence and an operating licence. For example, an operator that provides cellular mobile services will require (at least) an individual spectrum licence to ensure that it has exclusive use of the necessary frequency, and an individual operating licence in respect of its cellular mobile network and the services offered through that network.

URCA has four mechanisms to authorise licensable activities (whether pertaining to operations or spectrum): individual licences, registered class licences; non-registered class licences; and exemptions.

Figure 1 below shows the licensing structure.

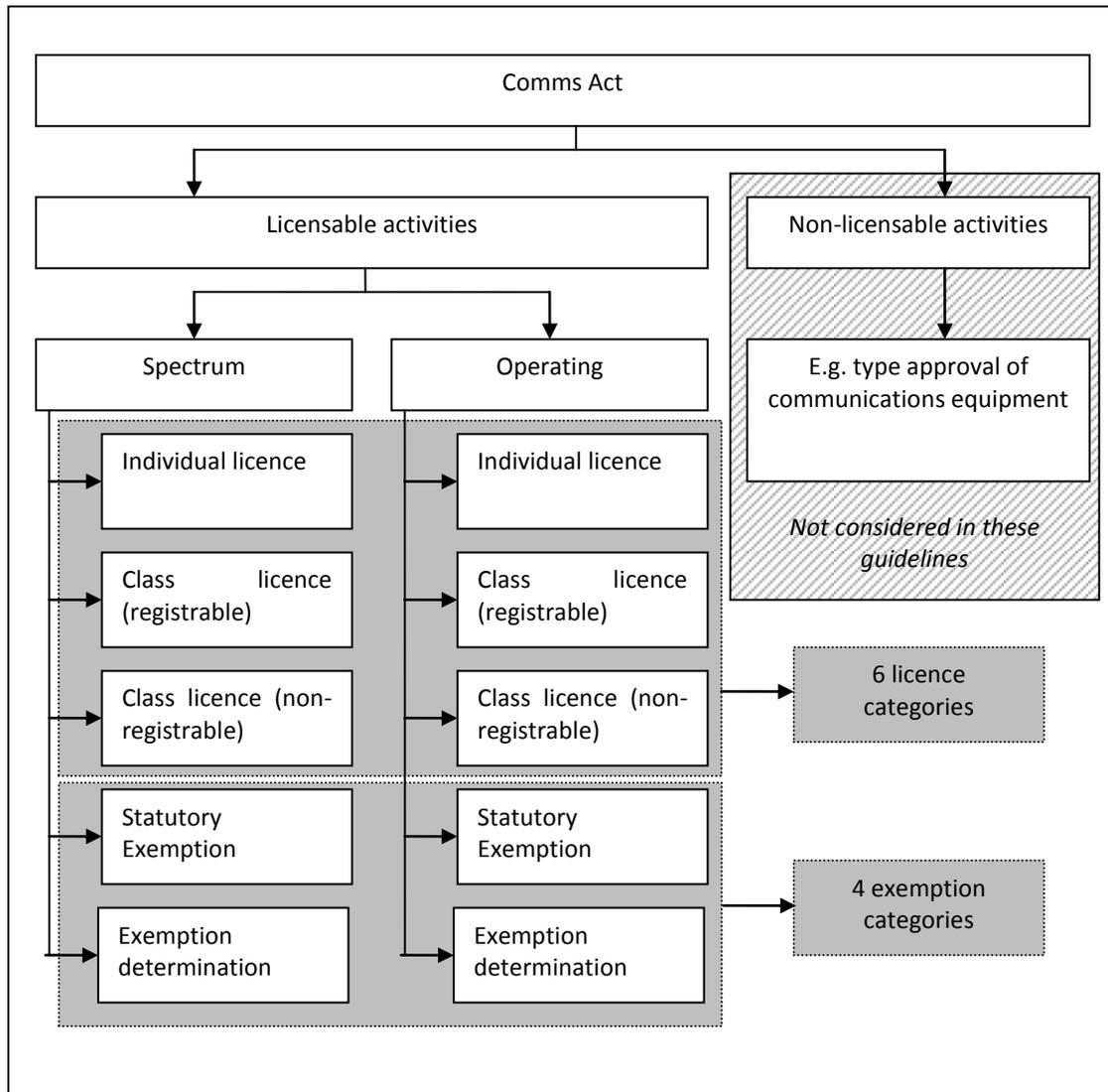


Figure 1: The new licensing structure

It can be seen from the table that there are six licence categories and four exemption categories. In most cases, an operator will require a spectrum licence or an exemption, as well as an operating licence or an exemption.

2.5 **Each licence type explained**

The features of each of these types of licence and exemptions are set out below. These descriptions of the licence types apply to both spectrum licences and operating licences. Section 3.1 explains how URCA will determine which type of licence is appropriate for a particular electronic communications network or service.

2.5.1 **Individual licences**

URCA has the power to issue individual licences under section 19 of the Comms Act. Under section 20(4) of the Comms Act, licence conditions may not unfairly discriminate between licensees and therefore individual licences for a specific type of network or service will be in a standard form to the greatest extent possible.

It may be necessary, however, to have specific conditions in a licence where a licensee has special rights or obligations. This will be the case if a licensee offering a service or network has been determined to have SMP under section 39 of the Comms Act (or presumed to have SMP under section 116 CA) or designated as a universal service provider under section 42 of the Comms Act (or Schedule 5 CA).

Individual licences will be issued for those activities that require a greater degree of regulatory intervention or monitoring, such as the provision of a public electronic communications network, or where exclusive rights are granted (e.g. for the exclusive use of spectrum in a specified territory for a radio station).

2.5.2 Class licences

URCA may issue class licences, rather than individual licences, where it is necessary to impose conditions relating to the operation of electronic communications networks or services but all licensees offering that network or service will be subject to the same conditions and there are no special reasons requiring that an individual licence be issued. The licence conditions for a class licence are published by URCA. Publication is on URCA's website and URCA will also maintain a copy of the generic class licences at its office for inspection by the public in accordance with section 10 of the URCA Act. Licensees will not be provided with a copy of the class licence unless they request it from URCA and pay an administrative charge.

Class licences may either be registered or non-registered. If a **class licence requires registration**, no person may provide the relevant services or operate the relevant network until they have been effectively registered by URCA in accordance with section 23 of the Comms Act. The registration procedure is set out below (at section 3 of these guidelines).

At the date of these guidelines, it is intended that there will be two types of registrable class licence: one registrable class spectrum licence and one registrable class operating licence.

If a **class licence does not require registration** any person may provide the electronic communications services or operate a network under that licence without applying to URCA. These persons are permitted to provide the services or operate the network provided that they comply with the conditions set out in the class licence, which are published on URCA's website and available for inspection at URCA's office.

It is important to note that a person that operates under a non-registered class licence is a “licensee” for the purposes of the Comms Act, irrespective of the fact that they are not registered with URCA.

2.5.3 Exemptions

Under the Comms Act, URCA may exempt certain activities from the licensing regime. Exemptions may either be **statutory exemptions**, specified in section 17(1) of the Comms Act or **non-statutory exemptions**, established by a determination issued by URCA under section 17(4) of the Comms Act. URCA will issue a determination establishing a non-statutory exemption if URCA intends to exempt any activity that is not covered by section 17(1) of the Comms Act.

A person may operate under an exemption provided that he or she does not breach the limitations specified in the exemption.

Table 1 below provides a comparative overview of the various forms of licences and exemptions.

Licence	Application criteria	Licence conditions	Liability to pay annual fees
Exemption	Not applicable	None	No
Class licence – non-registrable	No need to apply for the licence	Published on URCA’s website	No

Licence	Application criteria	Licence conditions	Liability to pay annual fees
Class licence – registrable	<p>Prospective licensees must submit an application form to URCA</p> <p>Licensees must meet the application criteria, which includes compliance with other legal obligations (e.g. maintenance and up to date payments in respect of a business licence, if appropriate)</p> <p>There is deemed approval of an application unless URCA objects within 45 days</p>	Published on URCA’s website	Yes
Individual licence	<p>Prospective licensees must submit an application form to URCA</p> <p>Licensees must:</p> <ul style="list-style-type: none"> - be legal entities incorporated in The Bahamas - ensure that their administration and management is conducted in The Bahamas - be fit and proper to provide the service or network - have sufficient intention, financial strength and resources to meet their obligations under the CA [s.26(3) CA] <p>URCA may impose other requirements in the application form</p> <p>In the case of operating licence, applies to a group of companies (not just the named licensee) [s.21 CA]</p>	Specified in individual licences and published on URCA’s website	Yes

Table 1: Table comparing licence types and exemptions

2.6 **Who can hold a licence (e.g. natural persons, corporations)?**

Any person may hold a **class licence** in The Bahamas, regardless where they are based. A “person” includes any natural person, public body or body of persons, whether incorporated or unincorporated. There are no restrictions under the Comms Act that would prohibit any person from holding a class licence.

Only legal persons duly incorporated in The Bahamas may hold an **individual licence**. Therefore, a resident of The Bahamas being a natural person, could not hold an individual licence directly. Such natural person will have to incorporate a company or other legal entity in The Bahamas in order to be issued an individual licence by URCA through that legal entity.

Further guidance on the qualification criteria for licensees is included in section 3.4 below, which sets out the licence application process.

2.7 **Individual operating licences awarded to company groups or subsidiary undertakings**

Individual operating licences will specify the name of the applicant on the front of the licence (the “named licensee”). As explained in further detail below, unless there are specific reasons to the contrary, subsidiary undertakings in a group of companies (defined in accordance with the Comms Act and Companies Act) will offer networks or services under a single licence.

The term “subsidiary undertaking” refers to any subsidiary company of a licensee and, where that subsidiary company is a parent company, any subsidiary undertakings of that parent company. “Parent company” and “subsidiary company” are defined in the Companies Act. A parent company is a company that owns at least 50% of the outstanding voting shares of each class or series of shares in another company. A subsidiary company is a company of which at least 50% of its outstanding voting shares of each class or series of shares is owned by another company.

Figure 2 below shows the shareholdings which will and will not lead to a company being within a licensee group.

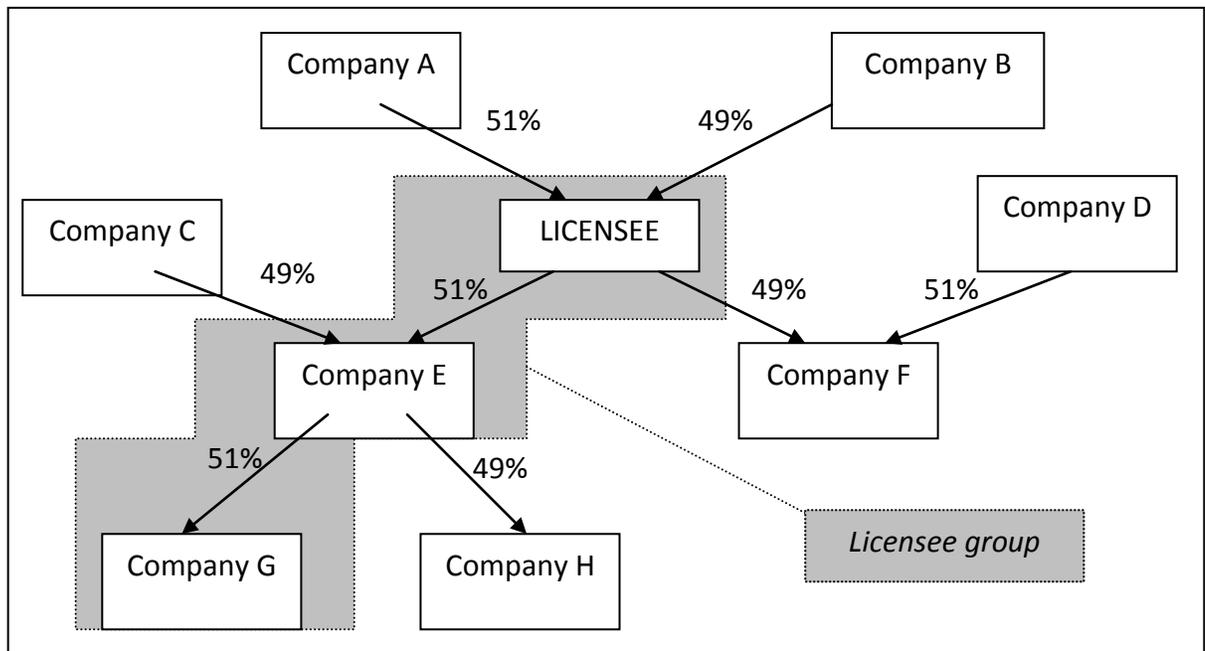


Figure 2: Group of companies

Companies operating under a single individual operating licence are jointly and severally liable for the payment of fees and any breach of the licence conditions.

The parent of the group (or at least the company highest in the company chain that will be offering electronic communications networks or services) should apply for the individual operating licence and identify in its application those companies that will operate under the licence.

If the named licensee wishes to extend the scope of the individual operating licence to other subsidiary undertakings, it must notify URCA accordingly under section 21 of the Comms Act. The notification will be effective fourteen days after it is received by URCA unless URCA issues an order stating that the subsidiary undertaking cannot be included in the individual licence.

Groups of companies should apply for a single individual operating licence rather than a different individual operating licence for each company that would provide electronic communications networks or services. Under section 21(3) of the Comms Act, URCA may refuse to grant an individual operating licence if another company higher in the chain of companies has an individual operating licence.

In unusual circumstances, URCA may issue an individual operating licence to a subsidiary undertaking in a group of companies where another company in that group already has a licence. This may be justified if there are compelling reasons for keeping the businesses distinct or it can be demonstrated that a subsidiary undertaking is not under the control of its parent company.

2.8 **Is there a limit to the number of licences available?**

Under section 26(3) of the Comms Act, URCA may not limit the number of **class licences** issued.

There is no general limit on the number of **individual licences** that can be issued by URCA. Increased competition should lead to innovation and price competition, ultimately benefiting consumers throughout The Bahamas. Nevertheless, in exceptional circumstances, URCA may restrict the number of individual licences. There are two factors in particular that may lead to a limitation on the number of licences.

First, the number of licences to be issued may be restricted by the limited availability of scarce resources. Spectrum, in particular, is a scarce resource and therefore there may be limitations on the number of **individual spectrum licences** issued. For example, bands in the premium spectrum range are suitable for long distance applications (e.g. the GSM spectrum in the 850 MHz range, which is used for cellular communications), leading to a greater likelihood of spectrum interference. The number of spectrum licences in the premium range must be restricted to limit the risk of interference and to ensure that operators have the appropriate incentives to invest in developing a network that would operate well for the benefit of customers and all persons in The Bahamas.

Other spectrum bands are commonly used for short-distance wireless communications (e.g. the Wi-Fi bands in the 2.4 GHz frequency block). There are no limitations on the number of licences available in the non-premium bands; interference issues are managed by requiring licensees to use only low-power devices.

Second, there may be ongoing exclusive rights that were granted prior to the Comms Act coming into force. URCA will not grant licences to other licensees before the exclusivity periods have expired. See the Telecommunications Sector Policy Revised 2002, for further information on exclusivity periods.

2.9 **What is the duration of a licence?**

The duration of a licence is the period from when the licence is issued until it expires. Licences may terminate earlier than their expiry date if they are revoked by URCA or surrendered by the licensee (see sections 9 and 10 below for further details). The duration of a licence will be specified in the licence.

2.9.1 **Individual operating licences**

Under section 26(7) of the Comms Act, the duration of an individual operating licence must be no less than five years. The standard individual operating licence has a duration of fifteen years. This means that such licence will expire on the fifteenth anniversary of its commencement date. A licensee may apply to URCA for its licence to be renewed by submitting a renewal notice no later than one year before the licence is due to expire. The renewal process is set out in more detail in section 6 below.

2.9.2 **Individual spectrum licences**

Under section 26(7) of the Comms Act, the duration of an individual spectrum licence must also be no less than five years unless the licence is intended for temporary use or for testing or trialling new technology.

2.9.3 **Class licences (operating and spectrum)**

There is a lower threshold for applying for a class licence than an individual licence. Class licences will not contain exclusive rights and do not give licensees wide ranging powers, such as the option to request access to land under Part XIV of the Comms Act. Therefore, there is no need to require licensees to re-apply for their licences periodically. As such, the duration of a class licence will typically be indefinite.

As class licences will have an indefinite duration, the licence will continue in force unless the licensee surrenders the licence, the licensee is de-registered or the licence itself is revoked by URCA.

In the case of a **registered class licence**, URCA may revoke the licence by deregistering the licensee. URCA may do this if the licensee fails to submit its annual declaration of no material change (see section 5.3 below) or other information required under the Comms Act, fails to pay its fees, or breaches the Comms Act or the conditions of its licence.

In the case of an **unregistered class licence**, URCA cannot revoke the licence in respect of specific licensees, but may revoke the licence itself, thereby effectively revoking it in respect of all licensees that benefit from that class licence. Further information on revocation of class licences and licensees' annual obligations is set out in section 5.2 below.

2.10 **What is the geographical scope of a licence?**

A licence may contain restrictions relating to the geographic scope of the licence. This means that there may be territorial restrictions on where a licensee may exercise his or her rights under the licence.

2.10.1 **Operating licences**

Operating licences and exemptions from operating licences will not usually have territorial restrictions. Licensees will typically have the right to provide electronic communications services nationally, throughout the Commonwealth of The Bahamas. Any geographic restrictions for the provision of the services would only relate to the use of resources, such as spectrum, needed to provide the services.

2.10.2 **Spectrum licences**

Individual spectrum licences will typically be national, meaning that the licensee may use the licensed spectrum anywhere within the Commonwealth of The Bahamas. In certain instances, however, spectrum licences will have geographic restrictions. For example, many licences for FM radio spectrum will contain geographical limitations to ensure that the spectrum is used effectively and efficiently throughout the Commonwealth of The Bahamas.

If included in a licence, geographic restrictions may relate to the location of base stations, along with other conditions to ensure that the signals are contained and focused to the radiating and reception elements of the network. Such limitations to the geographic scope would follow the natural boundaries of each island in the Commonwealth of The Bahamas. Therefore, each island would be considered as a defined service area and the spectrum licence would contain conditions that restrict spectrum emissions to the named island or islands.

Certain individual spectrum licences may include roll-out obligations in relation to the geographic scope of the licence. These obligations require the licensee to deploy its services through the use of spectrum throughout the territory specified in the licence. URCA may include roll-out obligations when granting

licences for premium spectrum to ensure that the spectrum is used efficiently for the benefit of the people of The Bahamas.

Registrable class spectrum licences will in most cases include conditions to avoid harmful interference to services provided by other operators or used by other persons. Depending on the spectrum granted under the class, there may be restrictions limiting the geographic scope of the operations and the provision of associated services. The extent of those limitations will be determined by URCA, on a case-by-case basis.

Non-registrable class spectrum licences and spectrum exemptions will not have any restrictions limiting use of the spectrum (or the provision of services using that spectrum) to a specific geographic location.

3 LICENCE APPLICATION PROCEDURE

3.1 What type of licence is required?

Any person wishing to provide an electronic communications service or operate an electronic communications network must either fall under an exemption or have a individual or class (registrable or non-registrable) licence. The types of licences and exemptions that can be issued by URCA are set out in section 2.5 above.

This section 3.1 sets out the core legal principles and policy used by URCA when assessing whether an individual licence, a class (registrable or non-registrable) licence or an exemption would be appropriate for a licensable activity.

Section 3.2 below guides potential licensees on what type of *operating* licence they would require.

Section 3.3 below guides potential licensees on what type of *spectrum* licence they would require.

3.2 Types of operating licences and exemptions

Persons that wish to provide an electronic communications service must have one of the following licences* or fall under one of the following exemptions (as well as having any necessary spectrum licence or falling under a spectrum exemption):

- an individual operating licence;
- a registrable class operating licence;
- a non-registrable class operating licence;
- a statutory operating exemption under section 17(1) of the Comms Act;

* Under the Comms Act, URCA must allow at least one month for interested parties to comment on class licences and non-statutory exemptions prior to the class licences and non-statutory exemptions coming into force. At the date of these guidelines, the draft registrable class operating licence, the draft non-registrable class operating licence and draft operating exemption are published in Preliminary Determination [ECS 03/2009].

- an operating exemption determined under section 17(1)(d) of the Comms Act

The key features of each type of operating licence and exemption are summarised in Table 2 below.

Type of licence/exemption	Key feature
Statutory Exemption	Is it a service provided exclusively by or to the police, a defence force, an emergency service or an authorised military service in the course of carrying out their duties [s.17(1)(a) CA]?
	Is it a network not intended for commercial gain with facilities on land occupied by the person that established the facilities or in a vehicle [s.17(1)(b) CA]?
	Is it a facility used to receive signals wirelessly directly from a transmitting station [s.17(1)(c) CA]?
	Is it a network or carriage service used on a foreign vessel or aircraft transiting through The Bahamas and not used to make a broadcast whilst passing through The Bahamas [s.17(1)(d) CA]?
Exemption Determination	Is it a network or carriage service for use in a closed user group?
	Is the person using the network or carriage service for self-provision?
Non-registrable class operating licence	Is the person only providing free broadcasting services, as defined?
Registrable class operating licence	Is the person providing a carriage service or operating a network that neither requires access to public land under Part XIV of the Comms Act nor requires a corresponding wholesale service in order to provide its retail services to subscribers (e.g. call termination)?
Individual operating licence	Does the person require access to public land under Part XIV of the Comms Act?
	Does the person require a corresponding wholesale service in order to provide its retail services to subscribers (e.g. call termination)?

Table 2: Factors differentiating operating licence types and exemptions

3.2.1 **Individual operating licence**

A licensee requires an individual operating licence if it needs to exercise the power to access public land under Part XIV of the Comms Act or if the licensee provides a retail service to subscribers that requires a corresponding wholesale service in order to provide that retail service.

By way of example, any operator that wishes to roll out network infrastructure across public land or who provides call termination will require an individual operating licence.

3.2.2 **Class operating licence**

Persons offering free broadcast services, such as radio broadcasters, will fall under the **non-registrable class** operating licence and therefore would not have to apply to URCA for an operating licence (they do require a spectrum licence from URCA).

Operators will require a class **registrable** licence if they do not fall under an exemption or the non-registrable class licence and do not require an individual operating licence. For example, many internet service providers not offering call termination will require a class registrable licence.

3.2.3 **Exemptions**

Persons will be exempt from the requirement to obtain an operating licence if they fall within one of the statutory exemptions or an exemption determination. Licensees should read section 17(1) of the Comms Act for a full list. In addition, URCA considers that there should be two further, non-statutory exemptions. The exemptions that, in URCA's view, are likely to be of most significance to the public are the following:

First, operators that provide services ***on their own land that are not for commercial gain*** will be exempt. This is a statutory exemption which may

include, for example, hotels that provide internet access to guests. Although they may charge a nominal fee for access to the internet, internet access is generally ancillary to their primary profit-making activities and therefore URCA considers that in most cases they should be exempt. This is a fact-based test and therefore, it may be that over time a licensee moves out of the exempt category. For example, if the hotel charged users for internet access on a wider scale to the general public, in addition to offering it to guests, then hotels may be considered to be offering internet services for commercial gain and, therefore, require a class licence.

Second, under the terms of an **exemption** determination, operators that ***self-provide*** should be exempt from the requirement for an operating licence. Self-provision means that the operator uses a network or service that it sets up. The network cannot be used to connect to a public network or for commercial gain. In most cases, the self-providing operator will not be an electronic communications service provider or network operator. Self-provision includes a wide range of companies that require remote signals to be sent to themselves, e.g. security companies that remotely monitor whether a house is secure.

Third, also under the terms of an **exemption determination**, operators within a ***closed user group*** should be exempt from the requirement for an operating licence. Closed user groups comprise people with a common interest that set up a network just for themselves. Those people do not allow people outside the group to use the network. Similar to self-provision, the closed user group cannot be used to access a public network and should not be provided by an electronic communications service provider or network operator. Closed user groups could include, for example, persons that want to share information with each other, such as a bank that links its branches to provide internal

information to its banks (without permitting them to connect to the internet or make calls outside of the user group).

As the closed user group exemption only covers *users*, a third party provider of a closed user group service would not be exempt. They would be considered an electronic communications service provider and therefore require a licence.

3.3 Types of spectrum licence

Persons that wish to use radio spectrum must have one of the following licences[†] or fall under one of the following exemptions (as well as having any necessary operating licence or falling under an operating exemption):

- an individual spectrum licence;
- a registrable class spectrum licence;
- a non-registrable class spectrum licence;
- a statutory spectrum exemption under section 17(1) of the Comms Act;
- a spectrum exemption determined under section 17(1)(d) of the Comms Act.

Operators will be **exempt** from the requirement to obtain a spectrum licence if they are using low power devices (see text box below). In all other cases, operators will require a licence. Operators intending to use shared spectrum should review the appendices to the **class spectrum licences** available on URCA's website to ascertain whether they should apply for a registrable class or non-registrable class licence. Operators that require exclusive use of spectrum should apply for an **individual spectrum licence**.

Further information on distinctions between spectrum licences is set out in section 2.10 above.

[†] Under the Comms Act, URCA must allow at least one month for interested parties to comment on class licences and non-statutory exemptions prior to the class licences and non-statutory exemptions coming into force. At the date of these guidelines, the draft registrable class operating licence, the draft non-registrable class operating licence and draft operating exemption are published in Preliminary Determination [ECS 03/2009].

Generally, low power devices have the following characteristics are transmitters (e.g. remote control devices, Bluetooth devices, domestic wi-fi devices) which emit low radiated power and are suitable only for short-range operations of typically less than 100 feet. In some instances, the range may be extended slightly, provided that the equipment is still low power and complies with the requirements set out below.

Lower power devices are typically not used for commercial gain and their primary purpose is not for business. These devices may not permit or enable the establishment and operation of a broadcast radio or television station. Spectrum used by low power devices is shared spectrum, used on a secondary basis. This means that the device user has no right to cleared spectrum and should not interfere with other spectrum users' operations. Low power devices approved for use in the United States will carry a compliance label stating that they meet the requirements of the Federal Communications Commission's (the FCC's) rules.

As The Bahamas is within the International Telecommunications Union (ITU) Region 2, URCA adopts the low power exemption list published by the FCC in Part 15 of Title 47 of the Code of Federal Regulations. The regulations are available at <http://www.fcc.gov/oet/info/rules/>.

3.4 What do applicants need in order to apply for an individual licence and what sort of information do they need to provide?

Section 26(3) of the Comms Act, the text of which is set out below, lists the requirements for applicants for individual licences.

26(3) Persons wishing to apply for an individual licence must-

(a) be legal entities duly incorporated in The Bahamas;

- (b) conduct the administration and management of the business from premises in The Bahamas;*
- (c) be a fit and proper person to establish, maintain and operate a network or carriage service or use radio spectrum;*
- (d) demonstrate to the satisfaction of URCA that they have sufficient intention, financial strength and resources to meet their obligations under this Act and to provide networks or carriage services in an effective manner and consistent with the electronic communications policy objectives; and*
- (e) meet any other requirements (including but not limited to the provision of information and data) that URCA may require.*

3.4.1 **Presence in The Bahamas**

The first two conditions in section 26(3) of the Comms Act relate to the establishment of the licensee. The requirement for an individual licensee to be a legal entity incorporated in The Bahamas is explained in section 2.6 above.

The requirement for the licensee to conduct the administration and management of the business from premises in The Bahamas is intended to ensure that the licensee is committed to providing services in The Bahamas. This provides security for residents and businesses that wish to acquire electronic communications services from it.

3.4.2 **Fit and proper person test**

Under section 26(3) of the Comms Act, URCA will not issue an individual licence to someone who is not considered to be a “fit and proper” person. As the term “fit and proper” is not defined in the Comms Act, it is a matter for URCA to determine whether it regards a person to be fit and proper, so as to be issued an individual licence.

If a licence application is rejected because the applicant is not considered by URCA to be fit and proper, that person would have an opportunity to reapply for a licence, making representations as to why URCA should reassess the applicant under the fit and proper person test.

URCA will consider the factors below when determining whether a licensee is a fit and proper person to have an individual licence. In all cases, evidence of a factor having occurred will be relevant, whether this occurred in The Bahamas or elsewhere.

- whether the person has been convicted of any criminal offence; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence or offences under legislation relating to electronic communications networks, carriage services or content services;
- whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate;
- whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by URCA, other regulatory authorities (including a legacy regulator in The Bahamas), professional bodies, or government bodies or agencies;
- whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;
- whether the person has contravened any of the requirements and standards of the communications regulatory system or the equivalent standards or requirements of other regulatory authorities (including a

legacy regulator in The Bahamas), professional bodies, or government bodies or agencies. This includes a history of non-payment of fees by the person;

- whether the person has been the subject of any upheld complaint relating to electronic communications sector activities;
- whether the person has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;
- whether, as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;
- whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;
- whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or tribunal, whether publicly or privately;
- whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;

- whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity; and
- whether, in the past, the person has not been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the electronic communications regulatory system and with other legal, regulatory and professional requirements and standards.

Each case will be decided on its own merit. If URCA does not approve an application for an individual licence, it must provide its reasons for rejecting the application [s.26(4)(b) CA].

3.4.3 **Capability of the licensee**

The requirement for an individual licensee to have sufficient intention, financial strength and resources to meet their obligations under the Comms Act is intended to ensure that individual licences are not issued to licensees that either have insufficient intention or insufficient ability to provide those services. This is of concern to URCA, due to the risk to subscribers that may acquire services from an operator that is then unable to meet its technical obligations (e.g. by having a poor quality of service) or unable to provide services over a longer period of time (e.g. because it does not maintain its interconnection charges payable to other operators).

3.5 **How long will it take to process an individual licence application?**

Under the Comms Act, URCA is required to review all applications for **individual licences** within thirty calendar days of receipt of the application [s.26(4) CA]. Within those thirty days, URCA must do one of the following:

- approve the application and grant the licence; or
- reject the application, specifying the reasons for the rejection; or

- request any further information that is necessary or desirable to evaluate the application. When URCA request further information from the applicant, then it will have a further thirty calendar days from the date of the receipt of that information to evaluate the licence application.

3.6 **What do applicants need in order to apply for a registrable class licence and what sort of information do they need to provide?**

The application form for a registrable class licence is available on URCA's website and at URCA's office. Persons that wish to provide electronic communications networks or services under a class licence should complete the application form and deliver it to URCA's office together with the licence application fee.

Applicants for class licences will have to provide their name and contact details. They will also be required to provide documentation showing that they hold any necessary licences from Government authorities (such as a business licence) or that they have applied for such licences and their applications are pending.

URCA will approve or reject an application within forty-five days of receipt. Rejection will occur if the application is incomplete, unsigned or the applicant is not suitable. Applicants may be considered to be unsuitable if they have a poor record of complying with licence requirements (including licences issued by legacy regulator in the past) or if they have outstanding debts that are due.

3.7 **How long will it take to process a class licence application?**

In the case of an application for a **class licence** requiring registration, the applicant may register for that class licence by filing with URCA the appropriate registration form that is completed correctly and signed. In addition the applicant must pay any application fee or other fees set by URCA.

URCA must provide the applicant with written notice of non-effective registration if:

- the person fails to qualify with any criteria applicable to, and so is ineligible for, the relevant class licence; or
- the registration form is incomplete, incorrect or unsigned; or
- the fee set by URCA has not been paid.

In the case where URCA has not provided a notice of non-effective registration then registration will take effect forty-five calendar days after the applicant filed:

- the complete, correct and signed registration form; or
- a completed, corrected or signed registration form filed in response to a notice of non-effective registration.

The applicant will be able to provide services or operate a network under the registered class licences once URCA has updated its register of class licensees to include the applicant. If URCA does not update its register or reject the application within forty-five days, the applicant will be deemed to be approved and may provide services or operate a network under the terms of the class licence.

In the case of an application for a **class licence** not requiring registration, the licensee can operate immediately. The licensee will need to ensure that it complies with the requirements of the class as posted on URCA's website. Failure to do so will mean that the licensee is in breach of the licence and the licensee can be fined for the breach. It is important to note that a licensee operating under the terms of a non-registrable class licence may require a spectrum licence in order to operate effectively.

3.8 **Where can a potential applicant obtain an application form?**

URCA has streamlined the application process by requiring applicants to complete one (1) application form for both an operating and spectrum licence. The information provided to URCA on the application form will allow URCA to determine the suitable licence(s) to issue to an applicant (i. e. an operating and/or a spectrum licence). An

application form can be downloaded from URCA's website at www.urcabahamas.bs. Forms downloaded from the website can be printed out for completion and then submitted to URCA for processing by sending the application to URCA's address. At the date of these guidelines, an application cannot be made electronically by accessing the URCA website.

Alternatively, application forms for URCA licences can be obtained from URCA's office.

4 FEES

4.1 Description of the fees

Without prejudice to other charges and fees that may be payable either under the terms of the Comms Act or under the terms of any other laws, URCA has the power and duty to collect certain fees from licensees for itself and on behalf of other bodies under Part XVI of the Comms Act. URCA will collect the following fees shown in Figure 3.

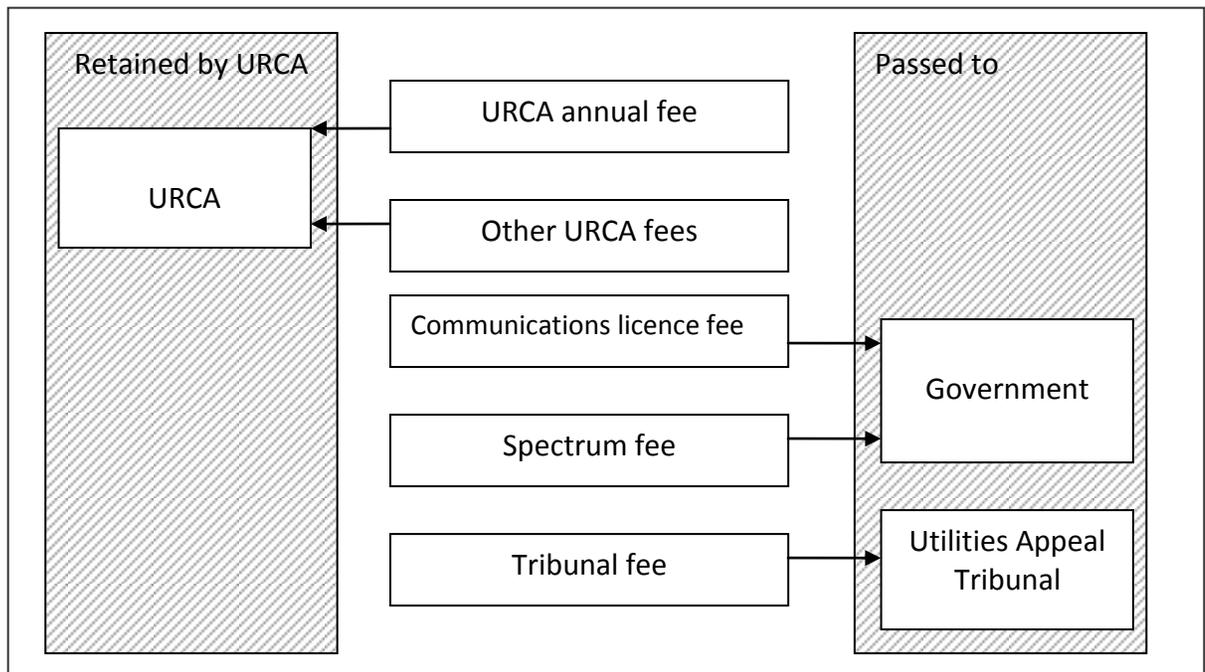


Figure 3: Types of fees

Each of these fees is described further below. A schedule with details of fees payable by the licensees is available on URCA's website at www.urcabahamas.bs.

4.1.1 URCA fees

Under section 92 of the Comms Act, URCA may determine and assess one or more of the following charges or fees on all licence holders:

- annual charges for licences to be calculated based on the licensee's relevant turnover;

- charges for particular services rendered by URCA in the performance of its functions or the exercise of its powers;
- fees to be payable for any application required or for the supply or making copies of documents; and
- other fees and charges for the administration and allocation of state assets (spectrum, numbering and domain names).

URCA annual fees

The URCA annual fee funds URCA's operations. It is charged annually in respect of the forthcoming financial year. The URCA annual fee is calculated based on a licensee's relevant turnover [s.92(1)(c) CA] or for services rendered by URCA in the performance of its functions [s.92(1)(a) CA].

Licensees that do not have a relevant turnover (i.e. they do not generate any revenue, directly or indirectly, from their licensed activity) or have a relevant turnover below a minimum threshold published by URCA in the fee schedule will only have to pay the URCA annual fees charged for the performance of URCA's functions under section 92(1)(c) of the Comms Act.

URCA's financial year will run from 1 January to 31 December. URCA will publish a draft annual plan for comment before the end of each financial year. That annual plan will set out URCA's targets for the forthcoming year and include its budget based on those target activities. Following receipt of comments, URCA will publish its final annual plan by 30 April of each year.

Before the start of a financial year, URCA will calculate the URCA annual fee that is required to satisfy the budget included in URCA's draft annual plan. Licensees that are liable to pay URCA annual fees (i.e. individual and registered class licensees) will **receive an invoice for the URCA annual fee in late November** each year. They will have thirty days to pay the invoice.

For ease of administration, URCA will typically issue a single invoice for URCA annual fees payable for different licences held by the same licensee (with fees itemised by licence). URCA will issue invoices for URCA annual fees in aggregate. In accordance with the licence conditions, URCA may revoke any licence held by a licensee if that licensee does not fully pay to URCA all URCA annual fees.

If URCA does not use all of the fees provided for in its budget which have been collected by licensees in a financial year, the excess fees will be set off against the administration costs for the subsequent financial year.

Other URCA fees

URCA may charge other fees listed in section 92 of the Comms Act. These fees may be used to cover URCA's *ad hoc* costs and include administrative charges and allocation charges for spectrum. These charges will be invoiced at the time or around the time of the activity for which they relate. For example, an application fee may be charged at the time that an application is made to URCA.

4.1.2 **Spectrum fees**

URCA will publish a National Spectrum Plan in accordance with section 31 of the Comms Act. The National Spectrum Plan will specify those frequencies that are in the premium spectrum band and those which are not. If spectrum is in the premium spectrum band, the Minister for Finance (or such other Minister that is responsible for the electronic communications sector from time to time) will determine how the spectrum fees should be calculated in accordance with section 93(1) of the Comms Act. If spectrum is not in the premium spectrum band, URCA will determine the spectrum fees to be paid in accordance with section 93(2) of the Comms Act.

Until such time as a National Spectrum Plan is published, licensees should refer to the spectrum allocation plan and fee schedule available on URCA's website.

Under the Comms Act, spectrum fees for premium and non-premium spectrum must be paid to URCA on behalf of the Treasurer before the licensee commences activities under its licence and each subsequent year. For ease of administration for URCA and for licensees, URCA will invoice licensees for the spectrum fee at the same time as it sends invoices for URCA annual fees and URCA administration charges (i.e. **late November**).

4.1.3 **Communications licence fees**

Under section 91 of the Comms Act, URCA acts on behalf of the Government to administer the billing and collection of the communications licence fee. Any licensee that is liable to pay URCA an annual charge under section 92(1)(c) of the Comms Act must pay the communications licence fee. Therefore, those licensees falling below the minimum threshold for payment of the URCA annual fee will not be required to pay the communications licence fee.

Under the Comms Act the communications licence fee must be paid to URCA on behalf of the Treasurer before the licensee commences activities under its licence and before 30 April for each subsequent year. For ease of administration for URCA and for licensees, URCA will invoice licensees for the communications licence fee at the same time as it sends invoices for URCA annual fees (i.e. **late November**).

The communications licence fee is set in Schedule 3 of the Comms Act as 3% of the licensee's relevant turnover. The amount of the communications licence fee may be changed by Parliament in accordance with paragraph 2 of Schedule 3 of the Comms Act.

4.1.4 **Tribunal fee**

Under schedule 3 of UAT Act, the expenses of the Tribunal and the salaries and allowances of the President, Registrar and members of the Tribunal (the “relevant expenditure”) will also be collected by URCA and passed on to the Tribunal.

The Registrar of the Tribunal will within three months after establishment of the Tribunal publish and certify as reasonable an estimate of the anticipated relevant expenditure of the Tribunal for the first period of at least twelve months ending on 31 December following establishment of the Tribunal.

For each subsequent period of twelve months ending on 31 December (each being a “relevant period”) the Registrar will publish an estimate of the anticipated relevant expenditure of the Tribunal for the relevant period based on:

- actual relevant expenditure properly incurred by the Tribunal in the exercise of its functions and powers during the previous twelve months; and
- an estimate of any additional or extraordinary relevant expenditure reasonably anticipated by the Registrar during the relevant period.

As soon as reasonably practicable and in any event within three months after publication of the Registrar’s estimate URCA will demand and collect the Tribunal Fee from all licensees or regulated persons in the regulated sectors.

4.2 **When will the fees be invoiced?**

The **URCA annual fee** will be invoiced annually in November so that it is due to be paid before **31 December**.

Communications licence fees and **spectrum fees** will be collected by URCA on behalf of the Government. Before the licensee commences its operations, URCA will invoice the licensee for the spectrum fee pro rated down to account for the portion of the year that has already passed. In subsequent years, URCA will invoice licensees in November for the spectrum fees and communications licence fees to ensure that payment is made by **31 December**.

Tribunal fees will be collected by URCA on behalf of the Tribunal. Licensees will be invoiced for the Tribunal fee **within two months** of the Registrar of the Tribunal publishing its estimate of its anticipated expenditure.

4.3 **How can the fees be paid?**

Licensees can pay their fees using any of the following methods:

- debit or credit card payment at URCA's office;
- money order;
- bank transfer; or
- bank draft /manager's cheque.

URCA cannot accept personal cheques or cash. If a licensee wishes to pay any fees using cash, they should deposit the payment into URCA's bank account at a branch of the Bank of The Bahamas. The licensee should retain a copy of the bank deposit slip and submit it to URCA as evidence of payment. URCA will issue receipts for all payments received.

4.4 **What is the consequence of not paying fees?**

If a licensee does not pay its communications licence fee or URCA fees by the due date, interest accrues daily at a rate of four percent per annum over the prime lending rate published by the Central Bank of The Bahamas. If the prime lending rate increases so that the daily interest rate is greater than that specified in the Rate of Interest Act, then

the interest rate will be limited to the amount specified in the Rate of Interest Act. Interest will not automatically accrue on overdue spectrum fees.

Overdue fees (including spectrum fees) and interest are a debt which can be recovered by URCA in court. Additionally, URCA may take other action against licensees that fail to pay their fees promptly, including commencing the process for revoking or suspending the licence.

5 **PROVISION AND UPDATE OF INFORMATION**

This section relates to two categories of information that licensees are required to provide to URCA: information relating to a change of control of the licensee; second, information relating to the licensee’s operations.

5.1 **When is approval required before licence ownership can change?**

All licensees must notify URCA prior to a change of control of that licensee. This obligation stems from two sources: the Comms Act and licence conditions. Table 3 below summarises the key aspects of the statutory and the licence requirements, which are then considered in greater detail below.

	Comms Act requirement	Licence condition requirement
Applies to licensees with individual licences?	✓	✓
Applies to licensees with registered class licences?	✓	✓
Applies to licensees with non-registered class licences?	✓	✗
Reason why URCA may withhold consent	Substantial lessening of competition or contrary to the media public interest	Acquirer unsuitable as a licensee (e.g. not a fit and proper person)
Timeframe for URCA to review notice of proposed change of control	30 days (simple review) or up to 120 days (adding 90 days in-depth review)	No fixed time but URCA should not unreasonably withhold its consent. There may be deemed consent in the case of class licences

Table 3: Change of control notifications

5.1.1 **Review under section 70 of the Comms Act**

This obligation to notify a change of control stems from section 70 of the Comms Act, which applies to all licensees.

Information on when parties should submit notifications and the procedure for notifying a merger will be set out in merger control guidelines that will be published on URCA's website. If the parties do not notify URCA of their merger and merge without notification, URCA may order that the parties de-merge, and/or fine either or both parties up to 10 percent of their turnover.

5.1.2 **Review under licence conditions**

Individual and registered class licences include conditions preventing a change in control without URCA's prior consent. There is no such requirement in non-registered class licences and therefore this provision does not apply to licensees that do not have an individual licence or a registered class licence (but note that the obligation in section 70 of the Comms Act applies to all licensees).

There is no test for a change of control in the licence conditions. As it is a question of fact whether there has been a change of control, URCA will use the same test as set out in section 71 of the Comms Act.

URCA will not unreasonably object to a change of control notified pursuant to a licence condition. The purpose of this condition in the licence is so that URCA can ensure that a person that would not be suitable as a licensee does not gain control over a licensee. For individual licences, URCA will approve a change of control under the licence conditions if the acquirer satisfies the application process in section 26 of the Comms Act (and described in section 3.4 above). For class licences, URCA will approve the change of control under the licence conditions if the acquirer would otherwise satisfy the application process in section 23 of the Comms Act (and described in section 3.6 above).

There is no statutory timetable for URCA to review a change of control under the individual and class licences. This contrasts with the review of a change of control under section 70 of the Comms Act. However, URCA will not unreasonably withhold or delay its approval of a change of control pursuant to a notification under a licence condition. In particular, for class licensees, there is deemed approval of a change of control under the licence if URCA does not object to the change of control or request further information within forty-five days of receiving the notice of the change of control.

5.2 **Is the licensee obliged to inform URCA of changes to the licensee's details?**

All operators that have an individual licence or a registered class licence have an ongoing obligation in their licence to ensure that the information held by URCA is up to date. This includes changes:

- that may affect the suitability of the licensee (e.g. failure to comply with other legal obligations such as the maintenance of a valid business licence);
- to the licensable activities carried out by the licensee (e.g. for spectrum, there may be a change to the output of power of the location of transmission);
- to the contact details of the licensee (e.g. change of name or address).

URCA must be notified in writing of any changes to the licence details as soon as the changes take effect. URCA's address is provided in section 1.3 of these guidelines.

5.3 **Annual declaration of no material change**

Licensees in possession of an individual licence or a class licence requiring registration will be required to sign an annual declaration stating that there has been no material change in the information previously provided to URCA. The declaration will confirm that each operator holding an individual licence or registered class licence has notified URCA of any changes that are outlined in section 5.2 above.

The declaration will accompany the invoice for payment that is sent by URCA annually. Failure to submit the declaration will result in URCA issuing a preliminary determination that the licence will be revoked. Licensees will be given the opportunity to make representations as to why the declaration has not been signed. Failure to provide URCA with a satisfactory reason for the licensee not signing the declaration will result in revocation of the licence thirty calendar days after the preliminary determination.

5.4 **Who to contact if there are changes to licensee information?**

Licensees must contact URCA in writing stating any changes to be made to information concerning their licence.

6 RENEWAL OF LICENCES

6.1 Are licensees notified of the need to renew a licence?

URCA will **not** notify licence holders that their licence is due for renewal. It is the responsibility of the licence holder to be aware the date of expiry of the licence.

6.2 What is the procedure for renewing a licence?

The renewal process relates only to licensees wishing to renew an individual licence to provide a network or carriage service and/or an individual licence for the right to use radio spectrum for a network or carriage service as these licences expire.

Class licences requiring registration are not assigned a date of expiry therefore they do not need to be renewed. However, as explained in section 5.3 of these guidelines, the licensee must annually declare that there has been no change in the material information provided on application.

Licensees wishing to renew an individual licence must complete and submit a new licence application. The application procedure will be the same as the process outlined above in section 3 of these Guidelines.

6.3 On what grounds may a licensee be refused renewal of a licence?

When considering applications for licence renewals, URCA will apply the same criteria as when considering applications for new licences. URCA will also consider information not included in the application for licence renewal, such as the licensee's history of complying with regulatory requirements and its ability to provide the services or network effectively.

7 VARIATION OF LICENCES

7.1 When can URCA vary a licence?

Any change to a licence condition constitutes a variation, or amendment of that licence. The terms “variation” and “amendment” are used interchangeably in the Comms Act and in this guidance note.

An addendum to a licence would not constitute an amendment if it is made pursuant to an express licence condition or provision of the Comms Act, provided that no terms in the body of the licence are changed. For example, if a licensee is determined by URCA to have SMP in a market, the licensee would be obliged to comply with the conditions in Part G of the individual operating licence (or such other SMP conditions in any other licence that it may hold) and those conditions specified in an URCA determination. However, this would not constitute an amendment to the licence. The process for applying SMP conditions is expressly set out in the Comms Act and the individual operating licence. An SMP determination adds conditions that are envisaged in the original licence and therefore does not constitute an amendment. Similarly, the requirement for licensees to comply with consumer protection obligations set out in a determination would not constitute an amendment of the licence. This is clearly set out, for example, in condition 16.2.7 of the individual operating licence.

URCA may amend licences under s. 27 of the Comms Act, (condition 7 of the individual operating licence and condition 4.2 of the class licence). Section 27 of the Comms Act sets out six circumstances that would justify URCA revoking or amending a licence:

- in order to comply with international treaties, commitments or standards, or laws of The Bahamas;
- it is necessary to amend the licence to further the electronic communications policy objectives and there is justification for causing any hardship that may result to the licensee;

- the licensee has repeatedly contravened or failed to cure a material contravention of any regulatory measure;
- the licensee made a material misrepresentation (including omissions) in the application or registration process;
- the licensee enters into receivership or liquidation;
- the licensee does not have the intention or financial strength and resources to provide such services or networks authorised under the licence;

The first two situations are more likely to result in an amendment to the licence (rather than revocation), whereas the next four situations are more likely to result in revocation of a licence (rather than an amendment). Section 27 of the Comms Act also sets out two processes for revocation: pursuant to an order under section 95 of the Comms Act or pursuant to any other process specified in the terms of the licence.

The first two situations listed under section 27 of the Comms Act, which are more likely to result in an amendment to a licence than the other situations, are described in more detail below.

7.1.1 Compliance with international commitments

International obligations may have an effect on the way that the electronic communications industry is regulated. For example, the International Telecommunications Union issues standards that harmonise the use of technology and spectrum so that equipment developed within one country may be used in another. Compliance with these standards allows Bahamian operators to use internationally-available equipment, bringing down the cost of providing services to persons in The Bahamas.

Additionally, the communications licensing regime in The Bahamas should be sufficiently flexible to allow the Government to keep any commitments it makes in international treaties. These commitments may relate to the

openness of trade in The Bahamas (e.g. the ability for overseas investors to invest in the Bahamian economy as part of a bilateral free trade agreement) or safety (e.g. compliance with international maritime conventions).

7.1.2 **Furthering the electronic communications policy objectives**

It may be necessary for URCA to amend licences to further the electronic communications policy objectives under s.27(1)(b) of the Comms Act. URCA's review should be proportionate to the risk of harm to licensees. Whilst URCA has a discretion to interpret the provisions to amend the licence, if an amendment is required in order for the licensing regime to be congruent with the sector policy published by the Government, then URCA may have little or no discretion regarding the amendments to the licences.

7.2 **What is the procedure for varying a licence?**

A licence may be varied either by **determination** of URCA or on the **written application** of the Licensee.

Under section 27(1) of the Comms Act, URCA may decide on its own initiative to vary a licence by determination. By virtue of section 18 of the Comms Act, URCA has discretion to issue determinations when it considers this appropriate prior to issuing a determination to vary a licence, URCA must consider the electronic communications policy objectives and the guidelines for regulation set out in sections 4 and 5 of the Comms Act.

Additionally, URCA must ensure that its regulatory measures should be efficient and proportionate to their purpose and any variation to a licence should be introduced in a manner that is transparent, fair and non-discriminatory. This is in keeping with URCA's specific obligation to ensure that terms of individual licences that relate to the same or similar networks do not unfairly discriminate between licensees [s.20(4) CA].

URCA must clarify whether the variations apply to a specific licensee under an individual operating licence or to all licensees under a class licence. In any case, all licensees affected by the variations must be notified of the proposed change and be allowed to provide comments in accordance with section 100(2) of the Comms Act. In the event that URCA proposes varying a class licence, it will engage in a public consultation on the variation.

The notice must include a preliminary determination specifying the proposed amendments to the licence [s.100(2)(a) CA] and the period within which a licensee can provide comments on the preliminary determination [s.100(2)(c) CA]. This consultation period will be at least one (1) month, starting on the day after which the preliminary determination was given [s.100(3) CA]. This consultation period may be shorter where a variation is proposed pursuant to a breach of the Comms Act by the licensee and a shorter consultation period is appropriate. For example, if a licensee has breached its licence conditions and it is necessary to effect changes to the licence in less than one month in order to limit significant damage to other licensees or customers.

Following the expiry of the consultation period, URCA will issue a final determination, which will include URCA's response to the licensee's opinions and representations and any amendments that are to be made to the licence.

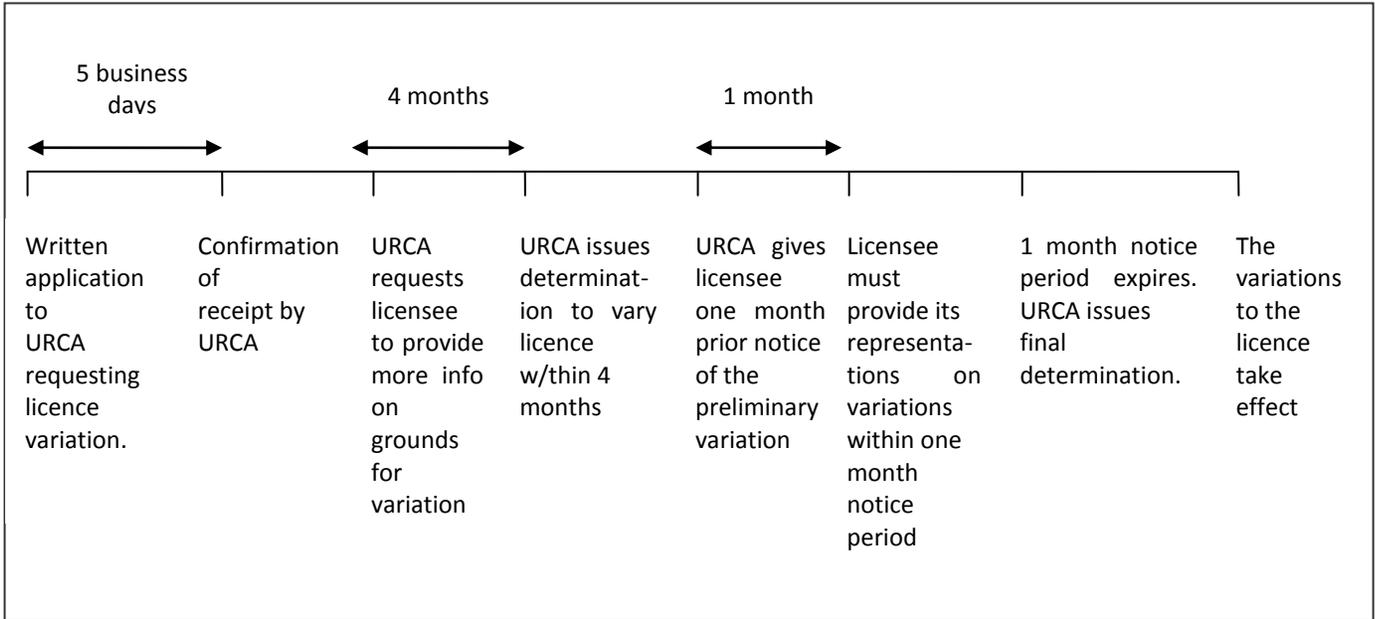


Figure 5: Typical licence variation timetable (requested by licensee)

7.3 Is a licensee entitled to compensation if its licence is varied?

Generally licensees that have their licence varied will not be entitled to compensation. However, licensees that have spectrum licences may be entitled to compensation if they are ordered to vacate spectrum under section 37 of the Comms Act and that spectrum is then awarded to a different licensee. There will be no compensation for spectrum vacated under section 36 of the Comms Act.

Following receipt of a notice of vacation of spectrum from URCA under section 37 of the Comms Act, the licensee may apply to the Tribunal to assess the amount of compensation that should be awarded.

8 **SUSPENSION OF LICENCES**

8.1 **Can URCA suspend a licence?**

URCA may suspend a licence by issuing an order for suspension under section 95 of the Comms Act [s.109(2)(c) CA]. If a licence is suspended, the rights and obligations under the licence are suspended. If a licence is suspended, the licensee would not be permitted to provide the services or operate the network that it would ordinarily be able to do under the conditions of the relevant licence.

Similarly, obligations under the licence would be suspended although a licensee would still have to comply with its statutory obligations. Therefore, for example, suspension of a licence does not relieve the licensee of any duty to pay spectrum fees under section 93 of the Comms Act. In fact, the obligation to pay a communications licence fee, URCA fee, Tribunal fee or any other fee may continue but the amount of the fee may not increase during the period of the suspension so long as the “relevant turnover” of the licensee is nil.

A suspension may either be for a specified duration or be contingent on some other factor. For example, URCA may issue an order requiring, for example, the payment of overdue fees or amendments to a licensee’s subscriber agreement. The order may also suspend the licence until the licensee complies with the other terms of the order. In other situations, it may be equitable for URCA to suspend the licence for a fixed period, e.g. one (1) month.

Prior to suspending a licence, URCA must have due consideration of the cost and implications of suspension on affected parties. Therefore URCA should consider the effect of the suspension on the licensee whose licence will be suspended as well as users of that licensee’s services and other relevant persons.

8.2 **What is the procedure for suspending a licence?**

URCA may suspend a licence by issuing an order under s.95 Comms Act. The process for suspending a licence is similar to the process for varying a licence, set out in section 8.2 above.

9 REVOCATION OF LICENCES

9.1 Can URCA revoke a licence?

URCA has the power to revoke a licence by determination under section 27 of the Comms Act. From the date that a licence is revoked, the licensee must cease providing electronic communications services and operating electronic communications networks under that licence.

Following revocation, the relevant person would no longer be a licensee. Therefore, URCA would not be able to impose new sanctions on that licensee for breach of its revoked licence. This would not preclude URCA from issuing orders against the licensee under those sections of the Comms Act that apply to non-licensees, such as for breach of the content code [s.52 CA] or for causing deliberate interference [s.33 CA].

Similarly, revocation would not preclude URCA from initiating proceedings under section 7 of the URCA Act in respect of breaches of the Comms Act. Therefore URCA would be able to prosecute former licensees that have outstanding fees or unpaid fines. Similarly, section 7 of the URCA Act gives URCA the power to commence proceedings against former licensees that breach section 16 of the Comms Act by offering licensable services without a licence.

9.2 Why would URCA revoke a licence?

URCA may revoke a licence under section 27 of the Comms Act. Section 27(1) of the Comms Act sets out those particular circumstances under which URCA may revoke or amend a licence. These circumstances are outlined and grouped in Table 4 below.

Policy objectives	To comply with international treaties, commitments, standards or national laws.
	To further the electronic communications policy objectives and there is justification for causing any hardship.

Sanction	The licensee has repeatedly contravened or failed to cure a material contravention of the electronic communications regime.
	The licensee fails to comply with an order or part of an order within the time specified in the order [s.27(1)(g) CA; s.95(4) CA].
	The licensee made a material misrepresentation (including omissions) in the application or registration process.
Insolvency	The licensee enters into receivership or liquidation.
Non-usage of licence	The licensee does not have the intention or financial strength to provide services or networks authorised under the licence.

Table 4: Reasons for varying or revoking a licence

9.2.1 Policy objectives

URCA may need to revoke a licence in order to meet policy objectives. These objectives may be specified in law, international treaties or in the sector policy published under section 6 of the Comms Act.

The ability for URCA to revoke a licence under section 27(1) and (2) of the Comms Act and the factors that it must consider are similar to the factors for revocation and amendment. These are set out in paragraphs 7.1.1 and 7.1.2 above.

9.2.2 Sanctions

A range of sanctions can be imposed on licensees that breach the conditions of their licence. These sanctions include (amongst other things) imposing fines, ordering specific performance, ordering that a licensee abstains from a particular activity, suspending a licence and revoking a licence. This gives URCA the flexibility to impose sanctions that are effective and proportionate. Revocation is typically considered to be one of the most stringent sanctions

that may be imposed as it prohibits the licensee from continuing to offer licensed services on a long-term basis (whereas the other sanctions would not).

URCA has a general duty to act in a manner that is fair, proportionate and non-discriminatory. Within these parameters, URCA has wide discretion when determining the appropriate sanction for breach of a licence condition. Generally, however, URCA will only revoke a licence as a sanction where the licensee has repeatedly breached conditions of its licence or has failed to remedy a breach. Therefore, a licence may be revoked if a licensee fails to pay its fees after receiving a reminder or repeatedly fails to pay its fees. This does not restrict URCA's ability to revoke a licence for a one-off material breach of a licence.

9.2.3 **Insolvency**

Consumers should be confident that their service operator has the financial capability to ensure continuity of service provision or network operation, particularly when selecting a new service provider or network operator. Under s. 27(1)(e) of the Comms Act, URCA may revoke a licence if the operator goes into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a court or tribunal for its compulsory winding-up or dissolution

9.2.4 **Non-usage of licence**

One of URCA's objectives under section 4 of the Comms Act is to promote the optimal use of spectrum. Therefore, URCA has a duty to ensure that spectrum granted to licensees is used effectively and efficiently by those licensees.

For highly valuable spectrum, URCA may include "roll out" conditions. These conditions may specify the minimum licensee steps that the licensee must take to ensure that the benefits of the spectrum licence are passed on to

consumers. If the licensee fails to meet certain roll out obligations under its licence or fails to offer the required services or networks to potential customers, URCA may revoke the licence so that another person can apply for the licence.

Even where a spectrum licence does not include roll out obligations, URCA may consult with licensees to revoke their licences for non-usage as part of a rationalisation programme. This is particularly likely to be the case to avoid “spectrum squatting” where the licensee does not use the spectrum effectively.

9.3 **What is the procedure for revoking a licence?**

URCA may revoke a licence by issuing an order under section 95 of the Comms Act. The process for revoking a licence is similar to the process for varying a licence, set out in section 8.2 above.

9.4 **Can an applicant receive a refund of their fees if their licence is revoked?**

As seen above, URCA is responsible for collecting a number of fees from licensees. These fees include URCA fees, spectrum fees the communications licence fee and the Tribunal fee. All of these fees other than the URCA fee are passed on to other bodies. URCA does not have the power to refund money that has been passed on or that is held on behalf of another body. Therefore, this section only considers whether URCA fees (excluding application and administration fees) may be refunded to persons that have their licences revoked.

URCA may consider refunding all or part of a licensee’s URCA fees if the licence is revoked as the result of a change in a policy objective under the table in section 9.2 above. Any refunds are likely to be up to an amount equal to the prepaid URCA fee that can be apportioned to a term of the licence that was not due to expire. For example, if a licensee pays its annual fee for a period from January to the end of December and its licence is revoked at the end of March due to a change in a policy objective, then if

considered equitable, URCA may grant a refund up to 75% of the licensee's prepaid annual URCA fee. It is irrelevant whether the licence was due to expire after one year or fifteen years, URCA will generally only return fees in respect of the unexpired prepaid term.

If a licence is revoked as the result of a sanction, insolvency or non-usage, then generally the licensee will not be entitled to a refund. These are matters that are considered to be within the control of the licensee and, as such, the licensee will not be entitled to compensation or repayment of prepaid fees if their licence is revoked.

Licensees that consider that they may be entitled to a refund should apply to URCA for the refund.

9.5 **Can an applicant receive compensation if their licence is revoked?**

Licensees are not entitled to compensation if their licence is revoked.

10 **SURRENDER OF LICENCES**

10.1 **What is the surrender process?**

There is no general process for a licensee to surrender its licence under the licence conditions or the Comms Act. However, if a licensee no longer wishes to offer services or provide networks under an individual licence, it may apply to URCA to surrender its licence. Class licensee who do not wish to continue to operate under the terms of a class licence would not usually wish to undertake a process to surrender a class licence, but will be de-registered by URCA.

URCA will then consider whether to accept the request to surrender the licence. In considering whether to accept the surrender of the licence, URCA will consider the licensee's current and contingent liabilities arising out of its licensed activities. In considering these liabilities, URCA may seek further information from the licensee and may publish a notice that the licence is to be surrendered.

If URCA accepts a request to surrender a licence, URCA may require a guarantee from directors of or investors in the licensee prior to accepting a request for a surrender.

10.2 **What is the effect of the surrender?**

Following surrender of a licence, the former licensee must cease all activities that are licensed under the Comms Act unless that person has another relevant licence which permits those activities.

Following surrender of a licence, the person that was licensed will continue to be liable for any obligations that arose during the term of the licence or arose out of an event that occurred (or should have occurred) during the term of the licence. If any person has provided a guarantee in respect of the former licensee's obligations, that person will also continue to be liable for those obligations.

10.3 **Can an applicant receive a refund if they surrender their licence?**

A licensee is not entitled to receive a refund if they surrender their licence. In limited circumstances, URCA may refund a portion of the URCA fees if it would be just in consideration of the factors surrounding the surrender of the licence.

11 ENFORCEMENT OF LICENCE CONDITIONS

11.1 URCA's powers of enforcement against licensees

The Comms Act gives URCA wide powers of enforcement against licensees that breach the Comms Act or their licences. The enforcement powers are set out in the scale below. Generally the powers to the right side of the scale will be reserved for more serious or repeated breaches by a licensee.

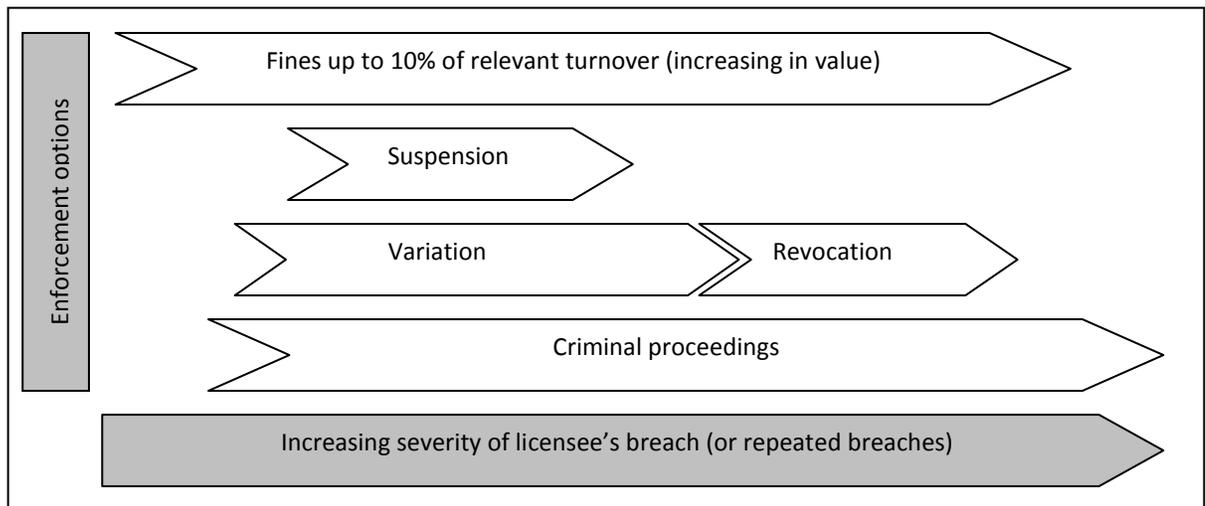


Figure 6: Enforcement options

This range of enforcement options means that URCA can ensure that its enforcement actions are proportionate to the breach. In particular, URCA has wide powers to fine licensees (whether they have an operating or spectrum licence and whether that licence is an individual licence, registrable class licence or non-registrable class licence). URCA can fine licensees up to 10% of their relevant turnover, although it would only do this in exceptional cases. URCA will publish guidelines on its fining policy (although this does not limit URCA's ability to issue fines prior to publishing the fining guidelines).

Under the Comms Act, URCA can commence criminal proceedings against licensees and non-licensees for breach of the Comms Act. It may be necessary for URCA to institute criminal proceedings where a person repeatedly breaches the Comms Act or where an injunction is required (e.g. to stop a person using spectrum illegally).

Prior to taking enforcement action against a licensee, URCA will issue a preliminary determination or adjudication, informing the licensee which provisions of the licence or Comms Act the licensee appears to have breached, the enforcement action that URCA proposes to take and the period during which the licensee can respond to the preliminary determination or adjudication. URCA will then consider the representations made by the licensee before considering whether to impose a sanction.

11.2 **Appealing against URCA's regulatory measures**

Licensees will have the right to appeal against any adjudication, determination, order or other regulatory measure that affects them by lodging an appeal before the Tribunal. For further information, see the Tribunal's guidance on proceedings.

12 **GLOSSARY**

Following is a glossary of the terms and phrases used in these guidelines.

Adjudication	A document issued by URCA under s.103 CA following an investigation of a breach or alleged breach of the competition provisions in Part XI CA.
Broadcasting Act	Broadcasting Act, Chapter 305.
Business licence	A licence permitting the conduct of business in The Bahamas, issued under the Business Licence Act, Chapter 329, or any other relevant legislation.
CA	See Comms Act.
Change of control	“Change of control” has the meaning as defined in s.71 CA.
Class licence	A licence issued under s.19(1)(b) CA, authorising the provision of electronic communications services or the operation of electronic communications networks or use radio frequency. The conditions of a class licence are the same for any operator covered by that licence. Class licences will be either “operating class licences” or “spectrum class licences”. Class licences, whether operating or spectrum class licences, will also be either registrable or non-registrable.
Comms Act	Communications Act, 2009

Communications licence fee	A fee payable by licensees to the Government under Sch. 3 CA. The communications licence fee is collected by URCA on behalf of the Government.
Companies Act	Companies Act, Ch. 308
Content service	A service either for the provision of material with a view to it being comprised in signals conveyed by means of a network or that is an audiovisual media service (as defined in s.2 CA).
Determination	A document issued by URCA under s.99 CA. Determinations may be used to establish rules under the Comms Act (e.g. specifying exemptions under s.17 CA or relate to infringements or alleged infringements by licensees).
General authorisation regime	URCA may replace the current licensing regime with a general authorisation regime under s.8(2) CA. Under a general authorisation regime, licences would not be issued to operators. Operators would be permitted to provide electronic communications services and networks provided that they complied with any general conditions or specific conditions published by URCA. Operators would still require a licence for the use of spectrum.

Individual licence	A licence issued by URCA under s.19(1)(a) CA authorising the provision of electronic communications services or the operation of electronic communications networks or use radio frequency. So far as is practicable, individual licences should include similar terms for different licensees providing similar services. Individual licences may have different terms where licensees have specific obligations, such as SMP conditions.
Individual operating licence	An individual licence that permits the provision of electronic communications services or the operation of electronic communications networks. An individual operating licence does not permit the licensee to use spectrum.
Licence	Unless the context requires otherwise (e.g. for business licences), a permit to provide electronic communications services or electronic communications networks or use spectrum. Licences may be class licences or individual licences.
Licensee	A person authorised under a licence.
Media public interest	Arises where one or more persons involved in a merger or acquisition involving a licensee is a media enterprise (i.e. involves either broadcasting or publishing newspapers).
Non-registrable class licence	A class licence that does not require registration. The conditions of the licence are public and any person may operate under the licence provided that they comply with the conditions in the licence.

Notice	A formal written communications between URCA and a licensee. Amongst other things, this may relate to changes of control or whether a licence application was effective.
Operating licence	A licence that permits the provision of electronic communications services or the operation of electronic communications networks. An operating licence does not permit the licensee to use spectrum.
Operator	A person that provides an electronic communications service or operates an electronic communications network (including any such network that requires spectrum) is regulated under the Comms Act.
Order	A document issued by URCA under s.95 CA. An order is directed to a licensee or other person that has breached the Comms Act. The order will specify actions that the recipient must take, including any fines payable.
Premium spectrum	Spectrum that is specified as being “premium spectrum” in the national spectrum plan published under s.31 CA.
Relevant turnover	“Relevant turnover” is defined fully in s.2 CA. It refers to the gross receipts in money or money’s worth attributable to the provision of any licensed or exempt service or network or attributable to a content service. The relevant turnover includes associated advertising revenue and other ancillary revenue, less any rebates paid.
Registered class licence	See “registrable class licence”,

Registrable class licence	A class licence that requires the relevant person to register with URCA prior to providing the service or operating the network.
Registrar	The person or body responsible for the administration of the Tribunal, appointed under s.3 of the UAT Act.
SMP	Means “significant market power” and refers to an position of economic strength which enables the relevant person to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers.
Spectrum fee	A fee payable to the Government under s. 93 CA relating to the use of spectrum. The spectrum fee is collected by URCA on behalf of the Government.
Spectrum licence	A licence that permits the use of spectrum. A spectrum licence does not permit the licensee to provide an electronic communications service or operate an electronic communications network.
State asset	For the purposes of the electronic communications regulatory regime, these are radio spectrum, national telephone numbers and domain names.
Telecommunications Act	Telecommunications Act 1999, Chapter 304.
Tribunal	The Utilities Appeal Tribunal, established under the UAT Act.

Tribunal fee	A fee payable to the Tribunal under Sch. 3 of the UAT Act. This fee is collected by URCA on behalf of the Tribunal.
PUC	The Public Utilities Commission, a body established by the Public Utilities Commission Act, 1993, Chapter 306. The Public Utilities Commission Act was repealed by the URCA Act and the powers of the Public Utilities Commission were transferred to URCA.
UAT Act	The Utilities Appeal Tribunal Act, 2009.
Unregistered class licence	See “non-registrable class licence”.
URCA	The Utilities Regulation and Competition Authority, established under the URCA Act. URCA is an independent regulator for utilities. At the time of publication of these guidelines, URCA’s sole remit relates to the electronic communications sector.
URCA Act	The Utilities Regulation and Competition Authority Act, 2009.
URCA annual fee	A fee payable to URCA under s.92 CA. This includes annual fees and ad hoc fees.