



PRELIMINARY DETERMINATION AND DRAFT ORDER

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

ECS 11/2012

Issue Date: 27 March, 2012

Response Deadline: 27 April, 2012

UTILITIES REGULATION & COMPETITION AUTHORITY

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Table of Contents

- 1. Introduction 1
- 2. How to Respond 2
- 3. Structure of the remainder of this document 3
- 4. Preliminary Determination 5
- 5. Draft Order 8
- 6. Appendix 10
- MUST CARRY OBLIGATIONS 10

1. Introduction

- 1.1 This document comprises:
- a Preliminary Determination; and
 - a draft Order; with
 - an Appendix,

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

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

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

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

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

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

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

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

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

1.8 It also appears to URCA that it would be:

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

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

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

2. How to Respond

2.1 Consistent with the procedure set out in section 100 of the Communications Act, Licensees, stakeholders and persons interested in this matter are advised as follows:

2.1.1 Persons interested in this matter may wish to make representations or objections on any matter contained in this Preliminary Determination including the Draft Order and the Appendix, and may do so in writing to URCA. Such representations or objections must be addressed to the Director of Policy & Regulation and received by URCA no later than 5:00 PM on 24 April 2012 as follows:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau; or

- by mail to P.O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242) 393-0153; or
- by email, to info@urcabahamas.bs.

2.1.2 URCA reserves the right to make all responses available to the public by posting responses on its website at www.urcabahamas.bs. If a response is marked confidential, reasons should be given to facilitate evaluation by URCA of the request for confidentiality. URCA may publish or refrain from publishing any document or submission, at its sole discretion.

2.1.3 URCA shall consider any representations or objections received in connection with this Preliminary Determination and shall make its Final Determination no later than one (1) month after the closing date for receiving such representations or objections.

2.1.4 URCA may, where necessary, request from any person responding to this Preliminary Determination such additional information as is reasonably required to make a Final Determination.

3. Structure of the remainder of this document

3.1 The remainder of this document is structured as follows:

Section 4 Preliminary Determination: URCA's preliminary determination that:

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

(b) Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall comply with and observe the Must Carry Obligations in the Appendix hereto; and,

Section 5 Draft Order: a draft of the Order which URCA proposes to make requiring that:

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

(b) Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall comply with and observe the Must Carry Obligations in the Appendix hereto; and,

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

4. Preliminary Determination

This Preliminary Determination is issued by the Utilities Regulation and Competition Authority ("URCA") pursuant to section 99 of the Communications Act, 2009. This Preliminary Determination gives notice that URCA proposes to issue a Final Determination pursuant to sections 99 and 100 of the Communications Act.

WHEREAS:

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

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

- (5) It also appears to URCA that it would be:
 - in the best interests of The Bahamas;

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

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

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

- (a) to apply the Code to Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas, except where a contrary intention is expressly noted in the provisions of the Code; and
- (b) to apply the Must Carry Obligations in the Appendix hereto to Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas requiring such services to simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

NOW THEREFORE, having regard to the foregoing URCA HEREBY DETERMINES THAT:

1. URCA shall exercise its power under section 100(2) of the Communications Act to determine in relation to URCA's general powers under section 52 of the Communications Act that:
 - (a) except where a contrary intention is expressly noted in the provisions of the Code, Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas shall comply with and observe the Code; and
 - (b) Licensees providing content services intended for reception by subscribers of carriage services in The Bahamas shall also comply with and observe the Must Carry Obligations in the Appendix hereto requiring such services to

simultaneously carry, without alteration, the complete packaged television channels of all audiovisual media services designated as Public Service Broadcasters.

2. URCA shall, in accordance with section 100(5) of the Communications Act, issue a Final Determination and may also issue an Order in this matter.

Dated the 23rd day of March, 2012.

Kathleen Riviere-Smith
Director of Policy and Regulation

5. Draft Order

This Draft Order is enclosed by the Utilities Regulation and Competition Authority ("URCA") pursuant to section 100(d) of the Communications Act, 2009. URCA proposes to issue this Order in conjunction with the Final Determination pursuant to section 95(1) of the Communications Act.

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

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

NOW IT IS HEREBY ORDERED that effective [DATE] 2012:

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

The failure by Licensees providing carriage services, content services, and on-demand audiovisual media services in The Bahamas to comply with and observe the Code or (where applicable) the Must Carry Obligations in the Appendix hereto or any part thereof may

constitute a breach of section 59 of the Communications Act and attract the imposition of a civil penalty under section 109 of the Communications Act.

Dated the 23rd day of March, 2012

Kathleen Riviere-Smith
Director of Policy and Regulation

6. Appendix

MUST CARRY OBLIGATIONS

pursuant to section 53(2)(i) of the Communications Act requiring Licensees providing Content Services intended for reception by Subscribers of Carriage Services in The Bahamas

- (1) This Appendix contains Must Carry Obligations in pursuance of section 53(2)(i) of the Communications Act which shall apply to Licensees that provide multi-channel content services intended for reception by subscribers of carriage services in The Bahamas, and all references to Licensee in this Appendix shall be construed accordingly.
- (2) Audiovisual media services broadcast by a Public Service Broadcaster which comprise one or more complete packaged television channels are must carry services, and must be carried by all Licensees simultaneously and without alteration.
- (3) A Licensee shall, within thirty (30) days of the Code coming into effect or within sixty (60) days of the date the Licensee obtains its Operating Licence under which it intends to provide content services for reception by subscribers of carriage services in The Bahamas, whichever occurs first, submit a request to the Public Service Broadcaster to carry any of its must-carry services which are compatible with the Licensee's network.
- (4) The Public Service Broadcaster must offer its specified television channels, free of charge, to the Licensee within three (3) months upon receiving a written request from the Licensee.
- (5) The Licensee shall commence its carriage of the must-carry services within three (3) months of receiving the services from the Public Service Broadcaster.
- (6) The Licensee shall bear the cost of the carriage of the must-carry services.
- (7) The Public Service Broadcaster is responsible for and shall bear the cost of delivering its signals to the Licensee in an un-encoded and compatible format.
- (8) The provisions of paragraphs (1) to (2) and (4) to (7) of this Appendix shall apply with any necessary modifications to any arrangement made before 1 September 2009 between the Public Service Broadcaster designated under section 115 of the Communications Act (i.e., the Broadcasting Corporation of The Bahamas) and any Licensee to whom this Appendix applies until such time as URCA has made a designation under section 61 of the Communications Act.