



# **CONSULTATION ON URCA's DRAFT ANNUAL PLAN for 2013 – STATEMENT OF RESULTS**

**ECS 05/2013**

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**UTILITIES REGULATION & COMPETITION AUTHORITY**

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# 1. INTRODUCTION

Under section 41(4) of the Utilities Regulation and Competition Authority Act (URCA Act), the Utilities Regulation and Competition Authority (URCA) is statutorily mandated to publish a draft annual plan on its website no later than the end of the financial year<sup>1</sup>, and afford interested third parties the opportunity to comment on the draft plan prior to its final publication. In compliance with this statutory requirement, on December 28, 2012, URCA published its draft Annual Plan for 2013 (Draft Annual Plan) and invited comments from the general public. The deadline for submission of responses was February 1, 2013.

During the consultation period URCA received written comments on the Draft Annual Plan from:

- Bahamas Telecommunications Company Limited (BTC); and
- Cable Bahamas Ltd. and its subsidiaries<sup>2</sup> (CBL).

URCA's Draft Annual Plan sets out in detail the programme of work URCA proposes to undertake for the forthcoming financial year commencing January 1, 2013 and ending on December 31, 2013.

The Draft Annual Plan outlined, inter alia, the following:

- URCA's Achievements in 2012;
- URCA's Focus Areas for 2013;
- URCA's Key projects for 2013; and
- URCA's Operating and Capital Budget for 2013.

This Statement of Results document now provides a summary of written responses to the Draft Annual Plan. However, the full text of submissions can be found on URCA's website at [www.urcabahamas.bs](http://www.urcabahamas.bs).

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<sup>1</sup> "Financial year" is defined in s. 2 of the URCA Act as "a calendar year".

<sup>2</sup> Caribbean Crossings Ltd. and Systems Resource Group Limited.

URCA thanks the respondents to this consultation for their contributions. All of those comments and suggestions have been carefully considered by URCA as part of its process to refine the Draft Annual Plan, and create an appropriate final plan for 2013.

URCA's final Annual Plan for 2013, which has today been released combined with URCA's Annual Report 2012, has therefore had the benefit of input received from BTC and CBL. URCA did not ask specific questions in the consultation document on the draft Annual Plan 2013 and therefore, in this Statement of Results, URCA has categorized the stakeholders feedback in accordance with the headings found in the Draft Annual Plan's Table of Contents. The following section, "Summary of Responses Received", summarizes the key comments made by BTC and CBL and details URCA's responses to those comments.

## **2. SUMMARY OF RESPONSES RECEIVED**

### **2.1 General Comments**

Both BTC and CBL made general comments throughout their responses which are compiled and responded to in this section.

#### BTC

BTC, in its response, welcomed the opportunity to comment on URCA's Draft Annual Plan for 2013. BTC highlighted that URCA should seek to ensure that there are no further delays in the issuance of a new Electronic Communications Sector Policy, noting the importance of stakeholders and investors knowing the priorities and objectives of the new Government for the sector. BTC urged URCA to demonstrate movement to the more light touch regulation anticipated in the 2009 sector policy and to more flexible rules for SMP operators, while suggesting that the static market for pay-TV services over the 2009 to 2011 period should encourage URCA to introduce incentives for investment and additional obligations on CBL to stimulate that market.

BTC commended URCA on its progress in developing local talent by way of recruitment and instituting an apprenticeship programme. BTC also noted the importance of the strengthening of URCA's institutional capacity, noting the orderly progression of appointments at the Executive level within URCA.

BTC commended URCA on the progress made in the years since the commencement of the Communications Act 2009, on 1 August 2009, and noted that the next three years should see The Bahamas poised to be among the top tiered countries, with a well-developed electronic communications sector. BTC noted that the major event during that period would be the liberalization of Cellular Mobile Services.

BTC also cautioned URCA on the format of its Town Hall Meetings to discuss CBL's proposal to increase the price of pay-TV services. BTC opined that an applicant should be required to participate in the process and should be prepared to defend its application so that URCA is at all times upholding and being seen to uphold its independence.

BTC expressed general satisfaction with the direction of URCA for 2013, and expressed the view that the planned activities are doable and essential to promoting much needed sector competition.

### URCA's Response

URCA notes BTC's comments regarding the movement to more "light-touch" regulation in certain markets coupled with the imposition of more *ex ante* regulatory remedies in the pay-TV market based on the apparent lack of growth in that market. URCA assures BTC that it will continue to apply regulatory measures as appropriate based on the status of the various markets. URCA reminds BTC that URCA intends to commence market reviews during 2013 which will help inform URCA of the status of markets, market power and to any additional remedies which may be appropriate.

URCA thanks BTC for its comments regarding URCA's initiatives to attract, train and develop local talent, and URCA remains committed to continuing that trend moving forward.

URCA also thanks BTC for its support of URCA's work over the period since 2009, and assures BTC that it intends to be prepared for the liberalization of mobile services due to occur at the end of BTC's period of exclusivity.

URCA notes BTC comments regarding the Town Meeting format, and stresses that notwithstanding any perception that may have emerged URCA at no point sought to, or engaged in the defence of any licensee. URCA considers that public consultation on any regulatory matter is URCA's responsibility, and while URCA invited CBL to participate, URCA does not impose that responsibility on CBL or any other licensee. It is therefore up to the licensee to determine whether it will defend its application before the public. URCA is confident that its approach ensures that members of the public have an opportunity to bring their concerns to the attention of URCA as the decision maker, which is required in order for effective consultation to take place.

URCA notes BTC's support for URCA's proposed 2013 activities.

### CBL

CBL commented that 2012 had been the year of raising URCA's public profile, and expressed willingness to be engaged in a properly conducted public consultation process. CBL noted new appointments at URCA and expressed the hope that a collegiate relationship between CBL and URCA would continue.

### URCA's Response

URCA notes CBL's comments and welcomes and is committed to developing an effective working relationship between URCA and CBL (and all of URCA's licensees and stakeholders) which URCA considers to be optimal for the implementation of good regulation.

## **2.2 Comments on Section 1**

### **Industry Overview**

Only BTC submitted comments on the overview of the electronic communications sector set out in this section of the Annual Plan.

#### BTC

BTC noted that the industry overview is indicative of an industry in a population which has not yet awoken to the entrepreneurial possibilities of the communications market. BTC urged URCA to give consideration to sponsoring some form of educational campaign to entice local and foreign investors to the sector.

BTC commented that the archipelagic nature of The Bahamas must be at the forefront of any study and BTC is not satisfied that such considerations are given the acknowledgement and priority they appropriately deserve in regulatory decision making, likely due to the fact that nonresident advisors do not necessarily have this characteristic at the forefront of their thinking.

BTC noted URCA's publication of the number and type of licences issued in 2012, and stated that it would be useful to the industry to be able to refer to a list of the names of the Licensees on URCA's website, and BTC queried why URCA had not deemed it appropriate to do so.

BTC noted URCA's stated commitment to enforce ex ante remedies for access and/or interconnection and to ensure compliance with the competition provisions in the Communications Act, and urged URCA to resist any inclination to exercise its regulatory powers in a high handed manner. BTC felt that ideally the movement should be away from ex ante rules and regulation to ex post regulation and eventually to market forces with competition.

BTC noted the static nature of broadband penetration over the period from 2009 to 2011. BTC highlighted its own activities to improve its broadband offering but argued that the SMP operator for the broadband market did not appear to be aggressively fulfilling its obligations or reselling broadband so as to contribute to increasing penetration in the archipelago. BTC noted in this regard that of the Retail Pricing applications considered by URCA in 2012, other than CBL's application for a Permanent Price Change to its SuperBasic Services all other applications including special promotions to bring greater benefits to consumers were made by BTC.



## URCA's Response

URCA notes BTC's comments regarding the extent to which the particular characteristics of The Bahamas are addressed in regulatory decision making. URCA appreciates BTC's concerns and contends that it has always ensured that the geographic nature of The Bahamas is appropriately considered in its decision making. BTC is reminded that URCA is, nonetheless, seeking to ensure that Bahamians are afforded a level, quality and price of services that is, to the extent possible, comparable to those in developed countries.

URCA also notes BTC's comments regarding the publication of Licensees, however URCA advises that it has for some time maintained and published a Public Register of all Licensees (including names and addresses) which is available on URCA's website at [www.urcabahamas.bs](http://www.urcabahamas.bs) under the "Publications" tab, or in hard copy from URCA's offices.

BTC has expressed concerns about URCA's continued use of *ex ante* regulation, and urged a move to more light touch regulation. URCA repeats its comments that it will continue to apply regulatory measures as appropriate based on the status of the various markets and relevant principles and criteria. URCA reminds BTC that URCA intends to commence market reviews during 2013 which will help inform URCA of the status of markets, market power and to the remedies which may be appropriate, if any.

URCA notes BTC comments regarding the pay-TV market, and notes that in its 2012 Annual Report published at the same time as this document, URCA reports a significant rise in broadband penetration (from 18 subscriptions per 100 population at the end of 2011 to 22 at the end of 2012), seemingly ending the somewhat static trend experienced during the period from 2009 to 2011. URCA also notes that recent developments in the market in late 2012 and early 2013 have seen revised offerings by BTC and CBL, both offering increased broadband speeds without increasing their package prices.

### **2.3 Comments on Section 2**

The following comments were submitted by both BTC and CBL on this section of the Draft Annual Plan, which summarized URCA's performance in 2012 against its Strategic Priorities.

#### BTC

BTC opined that work remains to be done to ensure a level playing field inclusive of BTC not being unduly fettered and harnessed, particularly with regard to the retail price rules which BTC considers to be onerous by international standards. BTC noted that it looked forward to a review and ultimately a relaxation of these rules.

In relation to URCA's Study of BTC's Efficiency, conducted in 2012, BTC noted and expressed its objection to the countries selected by URCA as comparators for the basis of the adjustments to BTC's RAIIO rates. BTC argued for the use of regional countries owing to their size and stage of development, and objected to the use by URCA of non-regional countries among the comparator countries.

BTC also commented on URCA's work in 2012 on the Publication of Separated Accounts, and took objection to URCA's decision to exempt CBL from the requirement to publish its Separated Accounts, a reversal of position from URCA's Final Decision on Obligations on SMP Operators made on 22 April, 2010. On the other hand, BTC welcomed the waiver granted by URCA from the publication of its 2011 Separated Accounts. BTC argued that such waivers should continue until the accounts had stabilized, and that CBL should also be required to publish its Separated Accounts.

BTC commended URCA on the opening of new spectrum bands in 2012, and in particular the 700 MHz band.

BTC also applauded URCA's hosting of the 10<sup>th</sup> Annual Conference of the Organisation of Caribbean Utilities Regulators in November 2012.

#### URCA's Response

URCA notes BTC comments regarding the level of regulation to which it is subjected, and repeats its response made above that URCA will continue to seek to apply a level of regulation that is appropriate for the status of markets in The Bahamas and consistent with relevant principles and criteria.

URCA also notes BTC's objection to the countries used as benchmarks in URCA's study of BTC's efficiency. URCA has responded fully to that issue in the documents related to that consultation and in correspondence with BTC. URCA repeats that it is satisfied that its decision in that matter was appropriate having regard to the countries selected, the circumstances of the matter, the availability of benchmarking information, and the manner in which URCA used the benchmarks selected.

URCA maintains its position that its decision to exempt CBL from the requirement to publish its Separated Accounts at this time is proportionate. URCA will address the issue of publication of BTC's separated accounts at the appropriate time within the 2013 review process.

URCA thanks BTC for its comments regarding the opening of the 700 MHz band, and looks forward to improvements and the expansion of BTC's services resulting from the allocation to BTC of blocks of 700 MHz spectrum arising out of that process.

### CBL

CBL noted that the responses to its SuperBasic Price increase application had not been published on URCA's website. CBL felt that this was an unprecedented departure from all of URCA's previous consultations and argued that in circumstances where URCA departs from an established course of conduct, it should notify the public and disclose the reasons for doing so expeditiously.

### URCA's Response

URCA advises CBL, as it did in correspondence, that due to the nature, volume and media (verbal, written and electronic) of comments it was impractical to publish all comments on URCA's website. URCA therefore directed the specific relevant comments to CBL for response in writing during its deliberation process, and published a summary of comments received together with its decision. URCA advises CBL that this approach was also adopted by URCA for the consultation on URCA's Code of Conduct for Content Regulation, which was another URCA consultation for which URCA undertook a similar consultation process (including town meetings), and in respect of which a large volume of comments (not all of which related directly to the matter under consultation).

## **2.4 Comments on Section 3**

The following comments were made by BTC and CBL in relation to URCA's Plan for 2013, and URCA's responses are provided to their comments on each matter.

### **ECS Policy for 2012 - 2015**

#### BTC

BTC advised that it looks forward to being introduced to the revised Sector Policy in Q2 of 2013, and to noting the objectives and vision for the sector of the present Administration. BTC noted that URCA is in the process of developing its strategy and priorities in light of the consultation process for the Electronic Communications Sector Policy (ECS Policy), and URCA's caveat that there might be a need to revisit projects identified in the Draft Annual Plan as a result of priorities identified in the ECS Policy. BTC urged that any such changes should be carried out in a transparent manner to avoid the appearance of any lobbying influences.

BTC also urged URCA to influence its Minister on the importance of the timely delivery of the ECS Policy, noting that the timeframe for consultation had already been extended for three (3) months.

#### URCA's Response

URCA notes BTC's concern about the revision of projects contained in the Annual Plan which may result from changes to the ECS Policy, and assures BTC that any changes would be conducted in a transparent manner, subject to URCA's overriding responsibility to effect the ECS Policy objectives.

URCA notes BTC's comments regarding the timely delivery of the revised ECS Policy, and assures BTC that URCA has been consulting with the Government to develop a revised policy which is aligned with the Government's intentions for The Bahamas, and which will ensure the growth and development of the sector in the best interests of The Bahamas.

#### CBL

CBL expressed concern about the lack of a revised ECS Policy for 2012 – 2015 or any official notification that the existing policy had been extended. CBL considered that the Comms Act had been drafted to enable URCA to consult with stakeholders on a policy, formulated and presented a revised draft policy to the Minister within the timeframe provided for consultation, and that if the Minister failed to start a consultation with URCA then after the prescribed time, a new policy would come into effect.

#### URCA's Response

CBL is advised that the timeframe for consultation on the revised ECS Policy was extended for a further three (3) months to 5 April 2013, and that the Minister has also determined that the existing ECS Policy (dated 6 October 2009) will remain in effect until a new or revised ECS policy is published in accordance with section 6 of the Communications Act, 2009.

### **Protecting and Promoting Consumer Interests**

#### BTC

BTC noted URCA's priority on introducing regulatory measures to establish clear and comprehensive consumer rights, complaints and advocacy, and quality of service frameworks. BTC urged URCA to ensure that a reasonable balance is maintained and that operators are not

stymied with bureaucratic or administrative obligations which impact the basic business principle of securing a return on investment.

#### CBL

CBL noted URCA's emphasis on consumer protection and expressed its eagerness to work with URCA in improving the customer experience. CBL stated its philosophy that objective and reasonable standards result in a better relationship and clearer expectations among all parties.

#### URCA's Response

URCA notes comments from BTC and CBL on URCA's proposed Consumer Protection focus for 2013, and assures that it will seek to formulate regulatory measures which are appropriately balanced for the market.

### **Market Reviews**

#### BTC

BTC noted that the need to constantly review and update aspects of the regulatory framework including market reviews in 2013, notwithstanding its relatively early days is essential to a level playing field and a credible sector in which operators and investors are confident. BTC endorsed URCA's proposal to review markets in 2013, and urged commencement of the process for market reviews without delay.

#### URCA's Response

URCA notes BTC's endorsement of its proposal to commence a review of markets in 2013.

### **SMP in Call Termination**

#### BTC

BTC noted URCA's delay in conducting market reviews of SMP in Call Termination, which was originally scheduled to commence in 2011 and was now scheduled to commence in the first quarter of 2013. BTC expressed its view that it is at significant risk as a result of URCA's delay of this project given the revision to BTC's RAIO rates, and took the position that further delay could force BTC to refer to alternative sources for redress.

## CBL

CBL repeated its comments from 2012 that consultation relating to determining SMP in Call Termination should be given very low priority. CBL felt that this need only be addressed if and when problems arise in respect of the pricing of fixed termination by operators other than BTC. CBL opined that for the time being the relatively small market shares of BTC's competitors, their consequently higher unit costs, and BTC's considerable degree of countervailing buying power make the need for a market review in this area a matter of low importance which can be postponed unless any issues develop.

## URCA's Response

URCA notes the comments of both BTC and CBL on the proposed review of the market for Call Termination. URCA considers that having regard to the presence of competition in the fixed market comprising up to four (4) operators, and in preparation for mobile competition, it is appropriate at this time to review the Call Termination market to ascertain whether fixed termination markets are susceptible to ex ante regulation. URCA notes BTC's comments regarding the delay of this project until this year however URCA considers that in previous planning periods other competing initiatives were of legitimate higher priority. URCA considers that this project is now of urgent importance for completion in 2013 and does not agree with CBL's comments that this project should be delayed further. Notwithstanding the relatively small market shares of BTC's competitors URCA must ensure that any markets in which market power exists are identified and appropriately treated.

As such, URCA reiterates its intention to commence consultation on this process during the second quarter of 2013.

## **Review of Retail Pricing Rules**

### BTC

BTC noted that URCA had indicated in 2012 that it would engage stakeholders on the Retail Pricing Rules, but that the engagement had not taken place. BTC considered that it is important for the development of the communications sector to have a review of the Retail Pricing Rules.

### CBL

CBL suggested that changes to the regulation relating to retail prices should be given a higher priority. CBL considered the process inefficient and inhibitive of operators' ability to react quickly to opportunities which can benefit consumers.

### URCA's Response

URCA notes the support by respondents for this process, which will retain its intended priority in 2013.

### **Rate Rebalancing**

#### CBL

CBL argued that the continued provision of fixed telephony below costs by BTC is a matter that URCA needs to address. CBL opined that if cellular mobile markets are foreclosed to other licensed operators the electronic communications sector competitive landscape is skewed heavily in favour of the dominant voice operator.

#### URCA's Response

URCA notes CBL's comments, and stresses that any change of the pricing structure for fixed calls in The Bahamas is a matter which will require careful consideration going forward.

### **Mobile Regulation**

#### BTC

BTC noted URCA's reference to close monitoring of the cellular services provided by BTC under its monopoly, which URCA suggested was necessary to minimize disadvantages to consumers. BTC expressed the view that over the past three (3) years BTC had demonstrated its commitment to provide benefits to mobile voice and data subscribers through its numerous promotional campaigns even in the absence of competition. BTC therefore questioned the need for aggressive regulation in mobile and encouraged URCA to relax regulatory measures in mobile in anticipation of competition.

#### URCA's Response

URCA notes BTC's comments and acknowledges the price reductions and promotions implemented by BTC during the past years, however, URCA also notes that the voluntary changes by BTC do not change BTC's power within the mobile market and the resulting need for URCA to remain vigilant regarding BTC's activities within that market and its ability to leverage its mobile market power in other markets.

URCA further advises BTC that once mobile services are open to competition URCA will revisit its approach to retail price regulation of mobile services to ensure that its regulation continues to be appropriate for the prevailing market conditions.

## **Universal Service**

### BTC

BTC noted its compliance and cooperation with the Universal Service requirements, noting that it has made no attempt to shirk its responsibilities and obligations in that regard.

### URCA's Response

BTC's comments are noted, as is its commitment to the fulfillment of its USO responsibilities. URCA will continue in 2013 to progress its Universal Service initiatives as outlined in ECS 01/2013, URCA's *"Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) under Section 119 and Schedule 5 of the Communications Act 2009"*.

## **Infrastructure Sharing**

### CBL

CBL noted that consultation of infrastructure sharing is not listed as a planned project for 2013. CBL suggested that given URCA's award of 700 MHz spectrum and its attendant roll-out requirements and the overall importance of wireless technologies in the ECS, that it would be useful to have a consultation on infrastructure sharing.

### URCA's Response

URCA has not lost sight of the issue of infrastructure sharing as it relates to the build out of wireless networks in The Bahamas, and the efficient use and availability of access to facilities generally. However, in its planning for 2013 URCA considered that there were other matters of higher priority to be addressed in 2013. URCA does, however, intend to look at this issue as part of its preparations for mobile liberalization.



## **URCA Budget and Fees**

### BTC

BTC was pleased to note that URCA continues to exercise due care with its budget and seeks to effect cost savings so that the overall budget has decreased notwithstanding the addition of new staff, and that this is reflected in the 2013 operating licence fees.

### CBL

CBL noted its pleasure at the decrease in URCA's budget, though noted that they were unable to reconcile the figures in the 2012 budget with those reflected for 2013. CBL questioned whether the 2013 budget allocation for staff costs takes into account the proposed increase in staff complement.

### URCA's Response

URCA thanks respondents for their support for URCA's budgeting and cost management.

CBL's comments regarding reconciliation are noted. The anticipated costs associated with increases in staff complement have been included in URCA's budgets for both 2012 and 2013. Some of URCA's vacancies that were identified and budgeted for in 2012 are yet unfilled and therefore the budgeted increase for 2013 is smaller than anticipated costs for the likely increase in staff complement for 2013.