

**The Bahamas Telecommunications Company Ltd.**

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February 12, 2010

Mr. Michael J. Symonette  
Chief Executive Officer  
The Utilities Regulation & Competition Authority  
4<sup>th</sup> Terrace Collins Avenue  
Nassau, Bahamas

Dear Sir:

**Re: BTC's Submission on URCA's Draft Three Year Strategy &  
Annual Plan for 2009 - 2010 Consultation Document - ECS 25/2009**

The Bahamas Telecommunications Company Limited (BTC) encloses its Submission on the Consultation topic at caption.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Felicity L. Johnson', with a long horizontal flourish extending to the right.

Felicity L. Johnson  
Vice President, Legal, Regulatory  
& Interconnection & Company Secretary

FLJ/ksw

Encls.



The Bahamas Telecommunications Company Limited

COMMENTS ON:

**URCA's Draft Three Year Strategy  
& Annual Plan for 2009 – 2010  
Consultation Document – ECS 25/2009**

**February 15, 2010**

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## **Executive Summary**

The Bahamas Telecommunications Company Limited ("BTC" or the 'Company') welcomes this opportunity to respond to this Public Consultation on URCA's Draft Three Year Strategy & Annual Plan for 2009 – 2010 that was issued on December 30, 2009.

The introduction of an Annual Plan is new to the telecommunications sector and is mandated under Section 41.2<sup>1</sup> of the Utilities Regulation and Competition Authority Act ("the URCA Act"). It is welcomed by BTC as further evidence of the transparency of the Regulator and for the fact that it allows all operators to plan their budgets and resources in advance of the coming year.

BTC notes the opportunity provided for a public hearing on the final plan and URCA's annual report or its performance as indicated in Section 41.7 of the URCA Act.<sup>2</sup>

In this response, BTC has proposed several additions to URCA's strategy and plans for 2010 in particular, including:

- Urging URCA not to describe Cable Bahamas Limited and Caribbean Crossings Limited merely as a cable company offering television services and one of the major operators of high speed data services.
- The need to highlight the dispute resolution process for operation as one of the principles that URCA holds central to its 2010 activities.
- Proposing that URCA spread the overly ambitious number of activities planned for Q2 over Q3 and Q4 as well.
- Proposing that URCA give consideration to staggering payment of operator's fees semi annually rather than a full payment in advance.
- Ensuring knowledge transfer to URCA's staff from external advisors as a part of the upskilling of URCA's staff.
- Supporting URCA's intention to provide guidance to Bahamian residents on wider socio-economic issues and urging URCA to promote and encourage all service providers to use innovation in building new networks and providing new services rather than "piggy backing" on incumbents in order to generate new employment and investment opportunities for The Bahamas.

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<sup>1</sup> Section 41.1 of the URCA Act 2009 states "As soon as possible and in any event no later than four months after the end of each financial year URCA shall prepare and publish - (a) a plan of its proposed objectives for the forth coming year ("the Annual Plan"); and b) a report of the carrying out of their functions during the financial year (Annual Reports)."

<sup>2</sup> Section 41.7 of the URCA Act 2009 states "URCA shall arrange at least one oral hearing during which the annual plan and report shall be presented and questions from interested third parties answered."

BTC also proposes that URCA allow all service providers to have access to a data bank managed by URCA and urges URCA to consider allowing itself to be evaluated annually by service providers.

BTC continues to be concerned that its allocation of licence fees is excessive and further urges URCA in the interest of transparency and to publish on its website the percentage allocations and or amounts of fees paid by each licensed operator together with a list of those operators who are exempted from paying fees.

## **Introduction**

The publication of URCA's draft three year strategy and annual plan for 2009 – 2010 is in keeping with its obligations as set out in the Utilities Regulation and Competition Act, 2009.<sup>3</sup> The consultation document that sets out the broad priorities of the regulator for the next three years together with the budget for the forthcoming year is in keeping with international best practice in other jurisdictions including the United Kingdom<sup>4</sup> and Jamaica<sup>5</sup>.

The invitation for comments on the draft three year strategy and annual plan for 2009 – 2010 from stakeholders is another indication from URCA that in a liberalized and growing sector, there is need for transparency, openness and non-discrimination in accordance with the Guidelines in Section 8 of the URCA Act.<sup>6</sup>

The purpose of this report is to:

1. Respond to URCA's industry overview;
2. Review URCA's vision and values for the sector;
3. Access URCA's three year strategy and priorities;
4. Present BTC's view on the potential for effectiveness of the Plan and Strategy;
5. Analyze and critique URCA's budget for the financial year 2009-2010.

The clarification of URCA's financial year at the outset of the document is acknowledged and welcomed as a number of stakeholders, new to the sector, will better appreciate and understand that not only is the sector in a transitional phase but the regulator too is in a period of transition and as such, there may be some anomalies in the short term which may require adjustment.

### **URCA's Overview of the Electronic Communications Sector (ECS)**

BTC agrees that the electronic communications services sector form an essential part of the infrastructure that underpins the Bahamian economy and is critical to the further development of the country's tourism and financial services industry.

<sup>3</sup> Section 41.4 of the URCA Act 2009 states "URCA shall publish the annual plan in draft form on its website in accordance with Section 8 by no later than the end of the financial year and shall give interested third parties the opportunity to comment."

<sup>4</sup> [http://www.ofcom.org.uk/about/accoun/reports\\_plans/annual\\_plan0809/statement/](http://www.ofcom.org.uk/about/accoun/reports_plans/annual_plan0809/statement/)

<sup>5</sup> <http://www.our.org.jm/images/stories/content/Publications/AnnualReports/>

<sup>6</sup> Section 8.1 of the URCA Act 2009 states "All regulatory and other measures by URCA shall be proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory."

Section 8.2 of the URCA Act 2009 states "URCA shall carry out its functions and exercise its powers in a manner that makes best use of the economic and other resources available to it and that is best calculated to promote any policy objectives applicable to any regulated sector."

BTC wishes to point out, however, that whilst the tourism and financial services sector employs approximately half of the country's labour force, the electronic communications sector employs hundreds of highly qualified persons who are the recipient of good salaries and who contribute significantly to the economy of the Bahamas.

While BTC agrees generally with URCA's positions regarding the various operators in the sector, URCA, when identifying the major players that provide electronic communications networks and services, described Cable Bahamas Limited (CBL) as a company that operates a cable television system and one of the major operators of high speed data services<sup>7</sup>. BTC is of the view that this description of CBL is not altogether correct and could be misleading as CBL is much more of a telecommunications provider than merely a provider of cable television and broadband services.

It is the view of BTC that CBL and their group of related companies, is a significant player in providing electronic communications services both nationally and regionally and together with its state of the art network should not be described as or viewed by URCA as a company that merely operates a cable television system and provides data and connectivity services in the country.

BTC's opinion is supported by a number of factors including a recent article that appeared in the Tribune dated January 29, 2010 in which CBL's President, Mr. Tony Butler, noted that the company is a "*...fully integrated Communications Company offering expanded telecommunications services to the Bahamian people*". Additionally, BTC was able to confirm this fact by accessing information available on the websites of CBL's sister and or associated companies Columbus Networks Limited, Columbus Communications Limited and Caribbean Crossings Limited.

BTC agrees with URCA that over the past few years, Bahamians have had increased access to electronic communications technologies and services and takes pride that BTC has played the major role in providing such services. BTC is indeed proud that The Bahamas' mobile cellular penetration is higher than that of the world benchmark and agrees with URCA that as a result of the mobile penetration rate, the Bahamas remains one of the top countries in the region in this category.

In URCA's description of the high speed internet market, it notes that although there are several other ISP providers which account for about 5% of the market, BTC and CBL are the main providers of broadband services and applications. BTC wishes to point out that while BTC and CBL are providers of broadband services, CBL continuously boasts of having 70% of the market and as such BTC urges URCA to review its description and give consideration to classifying CBL as the major provider of broadband services in The Bahamas.

BTC notes URCA's assumption based on "anecdotal evidence" on page five (5) of the Consultation Paper that consumers are dissatisfied with the level of customer care and service quality received from the major providers in the electronic communications sector. BTC urges URCA to reserve its comments until the proper assessment surveys are conducted.

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<sup>7</sup> URCA Consultation Document ECS 25/2009 at page 3 Paragraph 2

## **URCA's Vision & Values**

BTC agrees with URCA that the four (4) elements outlined in its vision for the electronic communications sector, if achieved, will make the people, society and economy more productive.

BTC however recommends that URCA expands its vision for the sector to include a statement on the need for the providers of electronic communications networks and services in The Bahamas to be given an equal opportunity to secure a reasonable return on investment to their shareholder while at the same time providing a high level of quality service to all consumers.

While BTC has no comment on URCA's mission statement as presented, we agree with the principles that are implied in the statement and offer the following statements which URCA may wish to include as principles coming out of its mission statement:

- A dispute resolution mechanism will ensure that issues are addressed in a transparent, proportionate, non-discriminatory and timely manner;
- Service Providers who disagree with regulatory decisions will have a fair and effective procedure through which to appeal their decisions.

BTC acknowledges and congratulates URCA on the list of values as outlined and BTC recommends that bearing in mind, the culture of The Bahamas and the relatively small market, URCA consider adopting an additional value that speaks to the independence of URCA in the execution of its statutory obligations.

## **Assessment of URCA's Strategy & Priorities**

BTC agrees with the position taken by URCA as it relates to its three year strategy and priorities. The Communications Act and the Sector Policy clearly set out the broad objectives of the government for the electronic communications sector and these objectives are appropriately adhered to as illustrated by URCA in the consultation document.

In reviewing the five main categories of strategic priorities which URCA has identified as being its focus for the 2009–2012 period, BTC notes that URCA correctly identifies the need to build institutional capacity by ensuring that its personnel are adequately trained and have the necessary resources to carry out their functions.

BTC is of the view that in addition to ensuring that the skill level of URCA's staff is upgraded, URCA should also ensure that a cordial and respectful relationship exists between its staff and service providers as well as between the service providers themselves. To this end URCA must be prepared to utilize all of their investigative tools and resources to ensure that all stakeholders in the sector abide by international best practices as it relates to fair dealings.

The goal set by URCA in its 2011 Annual Plan to provide guidance on wider socio-economic issues is commendable and BTC applauds URCA as they promote the need for new networks and services to enhance national productivity and competitiveness, so that all service providers will be encouraged and persuaded to use innovation in building new networks and providing new services



rather than free loading on incumbents. This incentive to develop state-of-the-art networks will also generate additional investment opportunities within The Bahamian economy with a spin off effect of creating additional employment for residents.

### Timetable

In reviewing the outlined 2009–2010 timetable submitted by URCA, BTC wishes to make the following observations:

### Implementing Regulatory Safeguards

- ✓ BTC commends URCA for the overall approach regarding the implementation of regulatory safeguards particularly the objective of the ongoing monitoring and enforcement of compliance issues.
- ✓ The recommended public consultation on procedures for resolving inter-operator disputes is eagerly anticipated.

### Promoting Competition

- ✓ URCA must ensure that there is a balance between the need to ensure effective competition by regulating access and infrastructure and the need for regulated companies to earn a reasonable return on investment and not allow new entrants in the market to “piggy back” off established providers by utilizing established networks. If not properly managed, an imbalance could be viewed as a deterrent to new investment in the sector by larger entities.
- ✓ The publishing of a National Spectrum Plan and the consulting on the opening of new spectrum bands as well as URCA’s right to claw back assigned spectrum including in the national interest<sup>8</sup> are excellent approaches to the promotion of effective competition in the sector.
- ✓ BTC agrees with URCA that there should be a public consultation regarding number portability but notes that whilst this is in keeping with international best practices to engender competition, the costs involved for an incumbent operator must be a consideration.
- ✓ The publication of a National Numbering Plan in Q1 will ensure the effective allocation of numbers on a non-discriminatory basis and set the parameters for the industry.

### Consumer Protection

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<sup>8</sup> Section 36.1 of the Communications Act, 2009 states: “URCA may by determination, made on application or on its own motion, without compensation, declare vacant any radio spectrum that has been assigned to a person, and may assign such spectrum to a different person on any of the grounds in subsection (2).”

- ✓ BTC supports URCA in the establishment of a Consumer Advisory Committee but cautions that the selection of the members of the committee must be carried out in a transparent and non-discriminatory manner taking into account the limited size of the population and the potential for personal agendas.
- ✓ BTC agrees with URCA on the need for a consultation on Quality of Service however we urge URCA to consider pushing back the time for this consultation to Q4 as BTC, with limited resources, will be faced with a number of issues in the first two quarters of 2010 including but not limited to (i) Publication of a Reference Access and Interconnection Offer (RAIO), (ii) Implementation of the Accounting Separation Model, (iii) National Numbering Plan (iv) National Spectrum Plan and related activities, (v) Dispute Resolution consultation, (vi) Public Consultation on USO, and (vii) Public Consultation on Content Regulation.
- ✓ Indeed, BTC notes that Q2 of the 2010 URCA plan contains significantly more activities (twice as many) as Q3 and Q4.

#### Public Interest

BTC supports URCA in its intention to issue a public consultation on the development of content codes of practice. BTC however is again concerned with the fact that many public consultations are scheduled for Q1 and Q2 and suggests that this consultation could be rescheduled for either Q3 or Q4 of 2010 to allow licensed service providers to be better positioned to respond to such a critical and sensitive issue.

#### Institutional Capacity Building

BTC has reviewed URCA's plan that is aimed at building institutional capacity as well as the human resources initiatives and is impressed with the program. We are of the opinion that URCA's plan is consistent with a well thought-out and progressive Human Resources Strategic Plan.

#### **URCA's Effectiveness**

BTC agrees with URCA that in order to measure and monitor key performance indicators, consistent data is a critical component. Any system to evaluate URCA's effectiveness should include internationally accepted management practices (KPI's) as outlined in the consultation document, however URCA should consider adding the following KPI's to the process:

- Annual evaluation by licensed service providers of URCA's performance and or;
- Annual independent survey of URCA's performance and effectiveness to be conducted by a recognized audit firm.

BTC commends URCA for the decision taken in 2010 to begin the collection of data relative to consumer complaints. It is anticipated that such data will be made available to the relevant service providers and thus utilized to improve quality of service issues and customer satisfaction.

BTC recommends that URCA develop a program whereby all service providers can have access to a data bank, managed by URCA and to include real-time data on:

- Industry KPI's
- Financial information on Service providers
- Financial Information on URCA's annual budget and the amount of monies that each licensed service provider contributes to the budget together with a list of providers who are not required to pay licence fees.

### **URCA's Budget**

In reviewing URCA's budget for the period, BTC recognizes the significant allotment for professional services which indicates URCA's dependence on advisors for the period. BTC is concerned as to whether the amount allotted is excessive and queries whether this is an effective use of funds which comes from fees paid by the service providers, although BTC also understands the need for external assistance given the newness of the sector. BTC strongly supports knowledge transfer to the Bahamian professional employed by URCA to ensure that such allocations will be reduced as staff are up skilled so that the sector benefits from well trained and exposed staff.

BTC notes, also, that there is no stated allocation or reference in the 2009–2010 budget for the Utilities Appeal Tribunal (UAT) although it acknowledges that this may be due to the fact that the offices and officers of the Tribunal are not yet established and that there must necessarily be a separation between URCA and the Tribunal. It is BTC's view that this statutory body may become extremely necessary in 2010 given the tone and substance of some of the responses provided by some service providers in the recent round of consultations regarding SMP obligations.

Notwithstanding the fact that, URCA's 2009-2010 budget is initially set for a period of sixteen (16) months BTC wishes to point out the following:

- ❖ The total outlay to URCA by BTC for this budgetary period is considered to be an excessive amount and is a sum that far exceeds its previous annual payments, including the annual franchise fee previously paid to the Government of The Bahamas;
- ❖ In addition to the increased payments to URCA for this period, BTC is still required to make significant payments in the course of operating its business including customs duties, taxes, etc. Given that BTC's licence fees payable to URCA have now more than **doubled** the extraneous charges together with the excessively high annual fees to URCA can make it difficult for BTC to operate a profitable business. BTC maintains its position that the fees charged to individual operating licensees by URCA, the Tribunal and the Government are excessive and unreasonably high by international standards and are likely to discourage investors to the Sector. BTC rejects URCA's response in the Final Determination on Class Licences, Exemptions and Types of Fees that the conglomerate of fees charged is not excessive by any standards.<sup>9</sup>

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<sup>9</sup> Final Determination on Class Licences, Exemptions and Types of Fees ECS 24/2009-2 November 2009:

- ❖ BTC has no knowledge or information regarding the amount of fees that URCA has collected from other licensed service providers toward this budgetary period;
- ❖ Consideration should be given to establishing a cap on fees to licensed service providers based on gross annual revenues so as not to have URCA's budgetary revenues become limitless;
- ❖ Consideration should be given to changing the process of paying budgetary contributions at the beginning of the year, allowing for quarterly or semi-annual payments. The payment in advance provision of fees is an onerous one for an operator.
- ❖ BTC anticipates that any unutilized monies from the fees paid to URCA will be credited to BTC as implied in the URCA Act in Section 40.2.<sup>10</sup>

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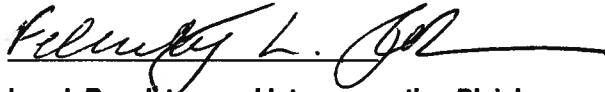
Clause 6.12 at page 13.

<sup>10</sup> Section 40.2 states "URCA shall retain any excess sums collected under subsection (1) for application the following financial year or years."

**Conclusion**

Generally, URCA has produced an ambitious and inspirational draft Annual Plan and Strategic objectives, which if met, bode well for a vibrant well structured and proportionately regulated communications sector.

BTC has addressed the issues but reserves the right to comment at any time on all issues and states categorically that the decision not to respond to any issue raised in this Consultation in whole or in part does not necessarily represent agreement in whole or in part with URCA's position, nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.



**Legal, Regulatory and Interconnection Division**

**The Bahamas Telecommunications Company Limited (BTC)**

**February 15, 2010**