

**The Bahamas Telecommunications Company Ltd.**

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February 1, 2013

**Mr. Stephen Bereaux**  
**Director of Policy and Regulation**  
Utilities Regulation and Competition Authority (URCA)  
UBS Annex Building, East Bay Street  
Nassau, The Bahamas

Dear Mr. Bereaux,

**Re: BTC's Comments on URCA's Annual Plan - 2013**

We enclose BTC's comments on URCA's Annual Plan 2013 issued on December 30<sup>th</sup> 2012.

Yours sincerely,

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

**Felicity L. Johnson**  
**Senior Vice President, Legal & Regulatory Affairs**  
**& Company Secretary**

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Encl.

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**COMMENTS OF THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED  
ON URCA ANNUAL PLAN FOR 2013**

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**1. Executive Summary**

BTC has again taken the opportunity to provide comments on URCA's 2013 Annual Plan. We have urged URCA to ensure that there are no further delays in the issuance of the new Electronic Communications Sector Policy as it is important that stakeholders and investors know the priorities and objectives of the new Government for the sector.

The company welcomes the efforts of URCA to develop Key Performance Indicators (KPI)<sup>1</sup> to measure its performance. BTC is firmly of the view that to the extent practicable, URCA should seek to measure its performance relative to that of other regional regulators. This becomes all the more important, given the embryonic stage of development of the electronic communications sector in The Bahamas and the need to ensure that there is adherence to best practice.

BTC urges URCA to begin to demonstrate movement to the more light touch regulation anticipated in 2009 and to more flexible retail price rules for the operators deemed to have Significant Market Power (SMP) in specified markets. Additionally, BTC is of the view that the static nature of Pay TV/Cable and Broadband penetration over the 2009 -11 period should indicate to URCA that incentives for investment and additional obligations on CBL including resale of services are necessary to stimulate this market.

The company notes URCA's progress in developing local talent by way of its recruitment and instituting an apprenticeship program. These institutional capacity building initiatives are important in the development of local talent. BTC in past comments to URCA's Annual Plan had advocated the development of local talent, given the challenges in some cases finding persons locally with the knowledge, skills and experience in utility regulation. BTC is pleased to see URCA's advancement in this regard, with the recruitment of a young Bahamian, recent university graduate, Assistant Case Officer – Economics as part of its apprenticeship program.

The promotion of competition should not be equivalent to the harnessing of BTC's efforts but rather should be aimed at promoting greater predictability and certainty of the Rules (both ex ante and ex post). The delay in conducting the Public Consultation in SMP in Call Termination would have sought to level the playing field with respect to termination rates. BTC notes that URCA has this project, i.e. Public Consultation on SMP in Call Termination planned for the first quarter (January to March) of this year, 2013.

BTC commends URCA for the decision by its Minister to award licences in the 700MHZ Spectrum band, in 2012 its institutional capacity building in recruiting young Bahamian professionals and its proposed market review in 2013 but cautions URCA on its protocol for Town Hall Meetings in ensuring that URCA is perceived as an independent regulator and to relax, rather than reinforce mobile regulation in anticipation of the introduction of mobile competition in 2014.

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<sup>1</sup> Table 5 – URCA Key Performance Indicators 2013, pg. 36

## **2. Introduction**

The commencement date of the Communications Act on 1<sup>st</sup> August 2009 marked the beginning of a dynamic three year period of regulatory work, necessary to implement a new Regulatory Framework for the Bahamian communications sector and to get the sector caught up with the international communications industry after the slowdown in progress caused by the unanticipated delays in the privatization of The Bahamas Telecommunications Company Limited (BTC).

The pace over the last three years has been rigorous and unrelenting but has resulted in significant regulatory progress in the Sector for which URCA is to be commended. The process involving the movement towards and the implementation of a competitive and liberalized market has been a learning exercise for all persons involved including URCA personnel who have risen to the challenge of leading the way for the Sector.

BTC now anticipates the next three years of events which, at the end should see The Bahamas poised to be among the top tiered countries, with a well development electronic communication sector. The major event being the liberalization of Cellular Mobile Services in 2014.

### **The Sector Policy**

BTC 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 this Administration. We note also that URCA is presently in the process of determining its strategy and priority in the light of the commencement of the consultation process for the Sector Policy and URCA's caveat at Section 1.2 of the Plan that as a result of the completion of the revised Sector Policy there could be a need to revisit some of the projects identified in this Plan. BTC would urge URCA that any decision to revisit some of the projects identified in the Plan should be carried out in the most transparent manner in order to avoid any appearance of lobbying influences.

We would urge URCA to influence its Minister on the importance of the timely delivery of the Sector Policy which has now been extended for a further period of three (3) months. Given this administration's recent election to office it is critical that the parties in the sector as well as potential investors are informed of this administration's vision and objectives for the sector as soon as possible. BTC expects therefore that the revised Sector Policy will take effect as anticipated by 5<sup>th</sup> April 2013.

## **3. Developments in the Industry**

The industry overview at Section 1.3 is indicative of an industry in a population which has not yet awoken to the entrepreneurial possibilities of the communications market. We have commented on this fact before and continue to urge URCA to give consideration to sponsoring some form of educational campaign to entice local and foreign investors to the sector.

We note that URCA also acknowledges that electronic communications is a "key enabler in development and nationhood" given the archipelagic layout of The Bahamas. It is our view, particularly given BTC's presence throughout the archipelago that the archipelagic nature of The Bahamas must be at the forefront of any study, and empirical evidence and that 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.

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We note at Section 1.3 (Country Overview) the number and type of licences issued in 2012. Again, it would be most useful to the industry for a number of reasons to be able to refer to a list of the names of the Licensees on URCA's website and we query why URCA's has not deemed it appropriate to do so.

We note also the statement at Page 6 that "URCA intends to further the promotion of competition through enforcement of ex ante remedies for access and/or interconnection, ensure compliance with the competition provisions of the Communications Act". In this regard, we urge URCA to resist any inclination to exercise their regulatory powers in a heavy handed manner – ideally, the movement should be away from ex ante rules and regulation to ex post regulation and eventually to market forces with competition. Indeed, the dangers of too robust an ex ante regime are apparent in the words of the 2009-12 Sector Policy at Section 24: "URCA should, where consistent with the core objectives, apply a light touch regulatory approach to the electronic communications sector and not indirectly restrict market entry, nor the commercial freedom of communications providers".

#### **4. Broadband and Pay TV**

We note the static nature of broadband penetration over the past three years. BTC anticipates that its new high speed data services and particularly the introduction of its LTE in the country service and the build out requirements of its 700MHz Spectrum license will greatly increase penetration levels particularly as BTC reclaims market share. We are aware, however, that other than BTC, the SMP Operator for broadband does not appear to be aggressively fulfilling its obligations or reselling broadband so as to contribute to increasing penetration in the archipelago. Of interest in URCA's table of Pricing Applications considered by URCA in 2012 other than CBL's application in December 2011 for a Permanent Price Change to its Super Basic Services, all other applications including special Promotions to bring greater benefits to consumers were made by BTC.

We note also in this regard the static nature of PayTV (Cable) penetration for the period 2009-2011. It is our view that it may benefit this market if URCA were to consider innovative and unprecedented regulatory reforms to encourage the resale of paid TV services which could involve the obligation on the SMP operator in paid TV to produce a Reference Access and Interconnection Offer. This certainly would encourage and promote interest in the industry and avoid the continuing monopoly and the growing use of satellite services by Bahamian residents and would be consistent with URCA's strategic objective of implementing regulatory safeguards i.e. "Ensuring that SMP Operators do not have an ability to foreclose markets to prevent new market entry" (p14:2.2.1 The Plan). Certainly BTC will do its part to break this monopoly when it introduces its television product during 2013.

#### **5. Regulatory Safeguards**

Whilst URCA has much to be proud of as an institution in the manner in which it has conducted itself, sometimes in the face of aggressive public comment, we are constrained to comment on the Implementation of Regulatory Safeguards as the first focus of the five broad strategic priorities for 2013. We advise that some 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 by all accounts are

quite onerous by international standards. BTC looks forward to an overdue review and ultimately relaxation of these rules to ensure that consumers are able to achieve the intended benefits.

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BTC provides further comments on its views relative to URCA's Regulatory Safeguards:

**i. Study of Efficiency of BTC:**

While BTC has argued and supported the use of benchmarks as part of the Public Consultation on BTC's Reference Offer (RAIO) rates, the company takes exception to the countries that were selected as comparators for the basis of adjustments to BTC's RAIO rates. BTC has argued and maintains that regional countries owing to the size of these economies and stage of development of the communications sector in the respective regional countries, were more suitable as peer comparators. URCA in its Statement of Results and Final Decision on BTC's Cost Efficiency (ECS 20/2012), selected non regional countries which were not suitable comparators. A tangible example is the inclusion of Luxembourg as part of the sample group when in fact this country is ranked as second in the world with respect to the development of its ICT sector. Owing to the stage of development of the communications sector in the case of Luxembourg, this country ought to have been excluded from the peer group.

**ii. Publication of Separated Accounts:**

BTC welcomed the waiver of the requirement for BTC to publish its separated accounts for 2011. BTC has publicly stated its objection to URCA's position exempting Cable Bahamas from publication of its separated accounts. As URCA had pointed out in its Statement of Results and Final Decision on the Publication of Separated Accounts, the decision that both operators were to publish was already decided in its April 22, 2010 Final Decision on Obligations on SMP Operators. BTC takes strong exception to the about turn of URCA's position to exempt CBL from publication given its earlier determinations on the subject matter. The company takes the position that the reversal of URCA's position would have required another round of Public Consultation.

BTC maintains its view that until such time as its Accounts have stabilized no publication is warranted. BTC further takes the position that the other SMP Operator should also be required to publish as properly decided through a public consultation process, its accounts, (even if there is no obligation for a RAIO) in the interest of transparency and proportionality.

**iii. Market Reviews**

The need to constantly review and update aspects of the regulatory framework including market reviews in Q2 of 2013, notwithstanding its relatively early days is essential to a level playing field and a credible sector with whom operators and investors are confident. Given also the 2009 regulatory framework made presumptions of SMP services, BTC is in agreement with URCA that it is appropriate to have a review of the markets for SMP services. BTC urges the commencement of the process for market reviews without delay.

**iv. Review of Retail Pricing Rules:** URCA had promised from mid 2012 that by the fourth quarter, 2012, there would be an engagement of stakeholders on the Retail Pricing Rules. To date, the engagement has not taken place. URCA has as part of its list of Projects for 2013, a

review of the Rules starting July, 2013. It is important for the development of the electronic communications sector to have a review of URCA's Retail Pricing Rules.

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## **6. New Spectrum Bands**

URCA is to be commended for the opening of new radio spectrum bands and the lifting of the spectrum moratorium in response to requests for spectrum in the 700 Mhz band. URCA clearly saw the value and opportunity of fostering services to place The Bahamas in the forefront in the region and competitively internationally.

## **7. Institutional Capacity Building**

Again, BTC is pleased to note the recruitment by URCA in 2012 of young Bahamians and the introduction of an apprenticeship programme at URCA in order to develop local careers in the field of utility regulation. This recognition of the need to develop talent in the utility regulation field is critical to the survival and further expansion of URCA. Further, the strengthening of URCA's institutional capacity is recognized as being of vital importance in order to ensure that URCA continues to adequately fulfill its mandate and objectives. We were impressed with URCA's hosting of the 10<sup>th</sup> Annual OCCUR Conference in November and we have noted the orderly progression of appointments at the executive level during 2012 which should hold URCA in good stead.

## **8. Priority Items: Consumer rights and Quality of Service**

In its priority items for 2013 of introducing Regulatory Measures to establish clear and comprehensive consumer rights, complaints and advocacy and quality of service frameworks, BTC urges URCA to ensure that a reasonable balance is maintained and that operators are not stymied at every turn with bureaucratic or administrative obligations which impact the basic business principle of securing a return on investment.

## **9. Mobile Regulation**

In the facilitation and encouragement of competition in 2013, we note the reference to close monitoring of BTC's cellular services under its monopoly being rationalized by URCA as necessary in order to minimize disadvantages to consumers. We are of the view that over the past 3 years, BTC has demonstrated its commitment to provide benefits to mobile and data subscribers through its numerous promotional campaigns when, in fact, there is no competition and therefore no external forces causing BTC to act thusly. BTC therefore questions the need for aggressive regulation in mobile indeed BTC has been encouraging URCA to relax regulatory measures in mobile anticipation of competition.

Again, BTC repeats its concern that in URCA's efforts to introduce "properly designed regulatory measures particularly in respect of dominant operators in specific markets" and URCA's view that they have been developed "having regard to best practice considerations" there is no assurance that closer attention has been paid to the peculiarities of the Bahamian communications sector and its degree of evolution as compared to the advanced European Union community upon whom the regulation framework is modeled.

