

The Bahamas Telecommunications Company Ltd.

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February 3, 2012

Mrs. Kathleen Riviere-Smith
Director of Policy and Regulation
Utilities Regulation and Competition Authority
UBS Annex Building
East Bay Street
Nassau, The Bahamas



Dear Mrs. Riviere-Smith,

Re: BTC's Response to URCA's Consultation Document: URCA's Three Year Strategy & Annual Plan for 2012 (ECS 24/2011)

BTC herein submits its response to URCA's Three Year Strategy & Annual Plan for 2012 (ECS 24/2011).

BTC looks forward in due course to URCA's feedback.

Sincerely yours,

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

Felicity L. Johnson
Senior Vice President of Legal, Regulatory & Carrier Services
& Company Secretary

Enclosure: (1)



The Bahamas Telecommunications Company Limited:

Comments On

URCA's Three Year Strategy &
Annual Plan for 2012

Consultation Document
ECS 24/2011

Legal, Regulatory and
Carrier Services Division
3 February, 2012

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EXECUTIVE SUMMARY

BTC welcomes the opportunity to provide comments on URCA's Draft Consultation Document on its Three Year Strategy and Annual Plan for 2012.

The release of the URCA 2012 Annual Plan marks a significant milestone in the evolution of the Sector, being the first three years since the reframing and reforming of the Telecommunications Sector which formally commenced on 1st August 2009 although, in fact, work started under the auspices of the Privatization Committee in December 2008 with the issue of a first Consultation, which heralded an initial grueling fast paced first year of Consultation after Consultation as all stakeholders sought to put in place a new Regulatory Framework that would be fit for purpose. The fast paced demands on SMP Operators have continued throughout these first three years and it would be fair to say that SMP Operators are now due for a well deserved interlude!

BTC notes URCA's reference to BTC's compliance in July 2011 with its six presumptions of Significant Market Power imposed on BTC, pursuant to Section 116 of the Communications Act, 2009 (CA 2009) in 2009 – yet another milestone in the new Regulatory Framework.

BTC is firmly of the view that regulatory measures should be proportionate and fit for purpose. While it is always useful to look at international best practices in adopting a particular policy approach, it is important to take account of the overriding consideration of the operating environment and by extension the stage of development of the communications sector in The Bahamas. It is important that due care is taken relative to the stage of development of the sector, as over regulation has unintended effects of stifling innovation and creating a disincentive for investment in the sector. These two unintended consequences, i.e. disincentive for investment and stifling of innovation run counter to URCA's stated principles. URCA should be cautioned against merely 'ticking the box' relative to planned activities, but rather take into consideration its stated principles and the stage of development of the sector.

In reviewing URCA's planned activities for 2012, we note that the agenda is quite ambitious, particularly taking into account the activities centered around consumer awareness. While there is much work to be done in developing the sector, due consideration should be taken of resources within URCA and the resources internal to operators. This ambitious list of activities will require, in some instances, significant reliance on external assistance, putting pressure on the budgets of the operators and URCA. It is therefore important that the planned activities are streamlined to take into account the availability of resources. Again, issues of proportionality and being fit for purpose are relevant here in streamlining planned activities for 2012.

In reviewing URCA's planned activities for 2012, BTC welcomes the Public Consultation for Universal Service Obligations. BTC has always maintained that in making comparisons of BTC's relative efficiency, no significant weight is attached to BTC's Universal Service Obligation costs, which places the company at a disadvantage vis-à-vis benchmark comparators and relative to local competitors in the delivery of services.

BTC also notes the Public Consultation on Identifying Operators with Significant Market Power in Call Termination planned for June, 2012. Given the importance of this Public Consultation in promoting effective competition in the communications sector, BTC would have thought that this Consultation would have had a more prominent place in URCA's Work Plan for 2012. This activity is scheduled for later in the year, June, 2012. There is a real concern that given URCA's ambitious work schedule for 2012, these two important Consultations will not receive the appropriate attention.

BTC has taken note of URCA's stated plans with respect to Institutional Capacity Building and consumer awareness initiatives. BTC welcomes initiatives aimed at up skilling of staff which will reduce the dependence on external consultants and initiatives aimed at educating consumers. While there is a stated commitment to these initiatives, we note that the funding for these initiatives are not in the fore in URCA's 2012 Budget.

BTC was challenged in the notes to find the funding for the important initiative of educating consumers, given that it would involve touch points across the country and elements of Institutional Capacity Building. Further, the allocation of training inclusive of sponsorship of a regional conference for 2012 represents 6.5% of URCA's operating budget in 2012 compared to 5.5% in 2011, a mere 1% increase as a share of total operating budget.

BTC in its review of URCA's Three Year Strategy and Annual Plan for 2012 has provided its comments under the respective headings or sections of the document as they appear below.

URCA'S SELECTION OF BENCHMARK COUNTRIES IN ITS ANNUAL PLAN

BTC notes the peer groups (i.e. sample of countries) which URCA has chosen to make broad based comparisons with respect to fixed line, mobile and broadband penetration rates. BTC on a number of occasions has taken the opportunity to highlight to URCA the need for caution in the selection of peer groups for which to compare The Bahamas or in some cases, BTC. The operating environment in The Bahamas is quite peculiar and it is difficult to achieve the level of efficiencies when compared to operating in an environment of a single land mass.

BTC notes in the Annual Plan, that URCA compares fixed line penetration in The Bahamas to that of the Cayman Islands and Bermuda. In the case of Cayman Islands, the country has a land area of approximately 102 square miles and a population of approximately 55,000 residents.¹ Due care should be taken in comparing the Cayman Islands to The Bahamas relative to fixed line penetration rates, when in the case of The Bahamas, the country has a total land area of 5,308 square miles, 100,000 square miles of ocean, which presents its own unique challenge of providing service to

¹ [Wikepdia.org/wiki/Cayman Islands](http://Wikepdia.org/wiki/Cayman_Islands)

households and a population estimated at 350,000 (compared to 55,000 for Cayman).² Similarly, the same caution should be taken in comparing The Bahamas to Bermuda. Bermuda has a land area of 20.75 square miles (roughly the size of one island in The Bahamas, i.e. New Providence) and a population of 64,000 residents (compared to 350,000 for The Bahamas).³ There is clearly a need for the appropriate caveats in any attempt at comparing The Bahamas with most countries. Any attempt to adjust for these variables (i.e. land area, population size, etc.) to allow for The Bahamas to be compared with URCA's peer groups is at best a theoretical construct given the difficulty in even attempting to replicate the operating environment in The Bahamas.

PROMOTION OF COMPETITION

Notwithstanding the massive reform in the Electronic Communications Sector which commenced with full liberalization of all services on 1st September 2009, there has been a very sluggish start to competition in the Bahamian Telecommunications Sector and a disappointing reluctance of local businesses of significance to embrace the opportunities afforded by the CA 2009. BTC is of the view, that it is therefore important that URCA proactively encourages local investment in the sector, with edu-sales programmes targeted at big business in the country. BTC is of the view, that it is not enough as stated by URCA at Page 5 of its Draft, to improve the accessibility, affordability and quality of ECS by encouraging new licensees for fixed voice, pay TV and broadband or enforcement of ex ante remedies, introducing market based approaches to Spectrum licensing and removing barriers to Switching services. URCA must also embark on a programme – most effectively in collaboration with the Ministry of Finance and the Chamber of Commerce - to attract significant local investment to the sector. At the end of the day, these investors are what will propel competition, not

² www.TheBahamasGuide.com

³ Source: United Kingdom Foreign and Commonwealth Office. [Http:bermuda-online.org/bdagovt.html](http://bermuda-online.org/bdagovt.html)

endless regulatory measures which could have the result of weakening the existing competition by stifling the business operations of SMP Operators.

MINIMIZATION OF THE COST OF REGULATION

We note at page 10, URCA's vision and values for the ECS and its statement that its efforts to attain its vision and carry out its mission will include "*...management of resources of URCA efficiently so as to minimize the cost of regulation to the industry...*" This is an important commitment by URCA as BTC has consistently upheld the position, that the cost of doing business in the telecoms sector is prohibitive, given the 3% Communications Fee due to the Government and the various URCA licences and administrative fees. Operators need to see a regulator demonstrating cost efficiencies and not coming to the industry every year with increasing costs. Indeed, with the ever present public mumblings that URCA's remit will be expanded shortly to the regulation of other utilities, namely electricity and water, it is extremely important that telecoms revenues are **not** used to subsidize the establishment of regulations for those sectors and it would be useful to have the assurance that the professional fees in URCA's budget (which represents 18% of the total operating budget in 2012 and approximately 20% of the operating budget in 2011) is entirely for the regulation of ECS and not subsidizing the framework for regulating the other sectors. i.e. water and electricity.

STRATEGY & PRIORITIES

In response to URCA's recap of Strategy and Priorities for 2009–2012, at Section 3 of the Draft (p.12), BTC again wishes to stress its concerns with the modus of delivery of consultations in rapid succession and with overlaps which place incredible strains on internal resources and finances in a business that must also continue to function as a going concern. It is hoped that URCA will be less intrusive in this regard going forward. The over regulation of BTC continues to be of concern to BTC and concomitant with that concern is the concern that to date, there is no overt evidence of progress with the

establishment of the Utilities Appeal Tribunal beyond appointments of the hierarchy in November 2010.

URCA's reference to its 2009-12 focus on five Broad Strategic Priorities as it assigned its duties in the context of the Sector Policy at page 13, with the implementation of "Regulatory Safeguards" heading the list once again, underscores the impractical, inflexible and protracted time lines of the Retail Price Regulations imposed on BTC, which by their overbearing monitoring of BTC in isolation to other operators have the potential to render the level playing field principle, notwithstanding SMP Obligations, as non-existent. BTC will seek revisions to these rules in due course.

BTC notes another Strategic Priority on Institutional Capacity Building and URCA's acknowledgment of the setbacks experienced by URCA in 2010-11. It is hoped that URCA has overcome its setbacks and challenges of 2010/11 and the Authority is well on its way for a productive 2012. This is important as URCA's success and achievements are linked to the growth and development of the Electronic Communications Sector (ECS).

Again, in its fervor to implement regulatory safeguards to seek to engender competition, URCA cannot overlook the fact that an important incentive to competition as earlier stated is to have investors of financial substance, and URCA, with its Minister, must proactively introduce marketing/initiatives to attract such investors for, in their absence no amount of regulatory measures will achieve effective competition and there is the risk of ending up with an overregulated, stifled and unmotivated telecoms sector with impractical and inequitable impositions on SMP Operators.

This excessive and stifling overregulation has also been evident in BTC's context in the demands by URCA in 2011 on BTC's Accounting Separation and Cost Accounting Reports, the Efficiency Study carried out on BTC and in the Retail Price Regulations in particular, in comparison to the lenient position taken by URCA with regard to CBL's

untying obligations for Broadband Internet from Cable TV. BTC was extremely vocal in its response to this generous concession to CBL in April of 2011 and finds URCA's non-committal statement that it **"...continues to monitor CBL's untying obligation..."** (p15) unhelpful and disappointing as to the present status of the CBL obligation and whether CBL is adhering to its obligatory deadlines.

EFFECTIVE REGULATION

Further, at Section 3.2 – "Promoting Competition" – URCA is reminded of the importance of regulation which **"...affords operators the opportunity to earn a reasonable rate of return on their investment"**. It is BTC's view that too often URCA appears to be caught up in the theoretical to-do "list", ticking the boxes without reference to the practical considerations of an operating business. URCA should make every effort to demonstrate that it listens to the voices of reason coming from operators with legitimate concerns and that it can be flexible in its thinking and its proposals rather than rigid and unrelenting. These too are important qualities for effective regulation.

INSTITUTIONAL CAPACITY BUILDING

Again, with regard to "Institutional Capacity Building", BTC has always supported the building of internal skills and expertise at URCA, in order to ensure that The Bahamas will ultimately have a deep bench of regulatory technical expertise and indeed, for yet another aspect of professional career opportunities to be available. URCA may wish to consider as a part of its marketing programme, highlighting professional career opportunities in Regulations to Bahamian residents, inclusive of school students, so that they are aware of these opportunities at home as they choose their areas of study.

BTC notes that the relatively high proportion of URCA's operating budget allocation is for Professional Services. In 2011, Professional Services accounted for 19.7% of URCA's total operating budget. In 2012, this proportion is estimated at 18.4%, a marginal reduction compared to 2011. While Professional Services continues to

represent a significant proportion of URCA's total budget, the allocation for training and up skilling of staff is relatively small. In 2011, URCA allocated 5.5% of its operating budget for staff training and travel. In 2012, URCA's allocation for up skilling of staff represented 6.5% of its operating budget, an increase of a mere 1 percent year on year. The 1% year on year increase for conferences, training and travel also included provision for a 2012 regional conference for which URCA would provide sponsorship, further reducing the amounts spent on actual training.

BTC continues to be concerned that an over reliance on external consultants by URCA keeps operational costs high. Every effort should be made to ensure that there is knowledge transfer and training through external consultants by cross training local persons in place and shadowing consultants at all times. External consultants should not be a substitute for the contributions of in-house staff.

In its Human Resources Strategy, BTC notes that whilst URCA is largely a technology driven body, a review of the ICB and URCA's Human Resources Strategy suggests a critical imbalance with regard to the technical expertise deemed essential to adequately and effectively address the regulatory mandates of the sector.

URCA'S 2012 PLANNED ACTIVITIES

We note with interest, the Planned Activities for 2012 at Section 4 of the Draft. In particular, we note the plans for the preparation of a new Sector Policy in 2012 to be recommended to the Minister, and the intention to position ICTs as a driver for future economic and social development which is intended to be reflected in the essence of the Policy on Universal Service, being the delivery of adequate broadband services throughout the Commonwealth, for an e-society together with public broadcasting. This is a commendable objective if conducted taking all aspects into consideration.

With regard to forthcoming Consultations on URCA's study of BTC's Efficiency, the review of RAIO charges to reflect new information and the Publication requirements for

Accounting Separation, BTC has had communications with URCA as to its position on these three Consultations and URCA is aware that for various and specific reasons, BTC has difficulties with the approaches taken by URCA. Essentially, it is BTC's position that URCA has elected to embark on work which is more conducive to more advanced i.e. liberalized sectors with entrenched competition and not a sector which is still in the nascent stages of liberalization and competition. Care must be taken by URCA to be sensitive to the realities of the Bahamian market lest irreparable harm be done as a result of over enthusiastic mapping with more established sectors.

BTC notes also, URCA's stated intention to focus on completing obligations mandated by the Act, which are presently in progress and to direct activities based on consolidation and Institutional Capacity Building with the stated objective being again, a level playing field for sustainable competition for existing and new competitors. BTC wishes to underscore the fact that notwithstanding its SMP status, it will expect equitable treatment by URCA inclusive of practical considerations rather than theoretical applications.

BTC welcomes URCA's planned activities centered on consumer education and awareness. There are elements of this initiative which can be linked to Institutional Capacity Building. Interaction with consumers through the educational programs can assist the Authority in better understanding the needs of consumers. There is tremendous scope for an exchange, with URCA educating consumers on its policies aimed at consumer protection and consumers in turn educating the regulator relative to their needs.

BTC is encouraged by the inclusion of a Public Consultation on regulations for Universal Service. URCA has appeared reluctant in its previous activities to tackle this vital component of a regulated sector which can assist with the level playing field. BTC trusts that there are no further delays in the implementation of Universal Service Regulations and ultimately a Universal Service Fund. Further, BTC welcomes the Public

Consultation on SMP in Call Termination. This Public Consultation is important in promoting effective sustainable competition in the sector.

Reviewing URCA's timetable of 2012 planned activities, it is BTC's view that too many consultations are indicated with a start date of January and are not sufficiently distributed over the course of the year. URCA's Work Plan for 2012 is quite ambitious. It is important that Public Consultations such as Universal Service Obligations Regulation and SMP in Call Termination are conducted during this year. These Consultations should be given greater weight, given the stage of development of the communications sector and the need to ensure that regulation is proportionate and fit for purpose.

SMP & US OBLIGATIONS IN THE NEW SECTOR POLICY

URCA's stated intention, to seek to advance the socio-economic well being of residents in The Bahamas, in the new Sector Policy through its focus on wireless technology and the introduction of competition in wireless services without delay is commendable. In its fervor however, to "fiercely" protect sustainable competition and to leverage every opportunity to ensure that market conditions favor investment and innovation in the ECS', URCA should note that the presumptive SMP operator in Broadband services is CBL which has the Universal Service Obligation in this service. BTC would not expect to be designated by URCA to supplement those obligations which CBL may have failed to meet.

WIRELESS SERVICES & BTC'S MOBILE EXCLUSIVITY

Again, whilst a stated objective of URCA is that competition in wireless broadband services is to be introduced and promoted without delay, it is important to ensure that measures and standards take into account BTC's mobile exclusivity, mindful of infringing technologies and the enthusiasm of some operators to encroach in services which they are not licensed.

URCA'S ENFORCEMENT POWERS

In its Industry Overview at page 3 - URCA estimates the size of the market at \$428 million in 2010. It is BTC's position that it would be of assistance if URCA would address the level of non licensed/operators/services and their impact on the market.

URCA in its General Powers at Section 8 of the CA 2009, at (h) has enforcement powers and is able to institute prosecutions in accordance with the terms of the CA 2009 or any other law. We note URCA's January 5th 2012 Public Advisory, to unlicensed operators in the media and we commend URCA for its initiative, however, we are also concerned that URCA assume its policing of the industry pro actively with vigor and deliberation and that URCA makes examples of illegal operators and violators in the industry. This is also an essential component of ensuring sustainable competition and a part of its fierce protection of the industry.

URCA'S EFFECTIVENESS EVALUATED

In the area of URCA's evaluation of its own effectiveness, BTC has found frustrating the often times long silences which follow the submissions on a Public Consultation with regard to the Statements of Results, the releases of which have lagged beyond what BTC expected with regard to the original commitment of thirty days. We note that there are KPI's spanning timeframes of less than 30 days to 60 days and BTC proposes that it would be useful for consultation participants, if the time frame for URCA's response could be provided by URCA in the Consultation document i.e. whether a response can be expected in 30 - 45 or 60 days, and if these indicated time frames are missed, it is proposed that URCA should as a courtesy, provide the public with a formal status update on the progress of the Statement of Results. As BTC has done in previous comments, BTC continues to advocate that some independent and objective evaluation of URCA's effectiveness should be conducted including soliciting the views of the industry in order to maximize the value of evaluations. Additionally, BTC queries which institutions URCA has benchmarked itself against. We note also, that under Table 8

“URCA’s Key Performance Indicators 2012”, neither Legal, Economic nor Engineering functions are representations in this table and we query how they are accessed and what the level of performance was in 2011.

OTHER CONSIDERATIONS RELATIVE TO URCA’S BUDGET

Under Section 7 of the Draft, which addresses the URCA Budget, BTC is **extremely** concerned with the increase yet again in operating licence fees from 1.165% to 2.22%.

We query the Executive compensation which is reduced by \$92,000.00 and ask whether this item includes provision for a new CEO. We note that no reference is made to the vacant CEO position in the Draft. BTC would anticipate that this critical position is filled post haste or that some communication is provided by URCA’s Minister as to why it remains vacant, some six months after the former CEO vacated office. The CEO position is a vitally important position to set the tone, take the lead and provide a communication avenue for operators.

BTC is also concerned with the 10% increase in rent for URCA’s premises. Given the depressed real estate market, BTC would expect that URCA has negotiated and or renegotiated the best rental terms available. The industry cannot continue to absorb rental increases on top of a base rent that is already at the high end of the scale and URCA must seek to contain any other increases or seek alternative and less expensive accommodation.

We note the 21% increase in Non-Executive members honoraria which is stated to reflect additional sums to be paid to members for additional time spent outside regular Board meetings. BTC would wish to know, what is involved with this “additional time”?

BTC is of the view that there are a few areas in URCA’s Operating and Capital Budget for 2012 (as per Table 9 of URCA’s Annual Plan), where there is a need for greater visibility of the components going into the planned expenditure. An example of this is

the proposed spending for Conferences, Training and Travel. While in the 2012 budget, there is a year on year increase of \$63,480 (from \$291,000 in 2011 to \$354,480 in 2012), URCA has indicated in its notes relative to this planned spending that part of the provision for this line item will be to host a regional conference in November, 2012 where URCA will provide 'some level of sponsorship'. So, it is difficult from the notes to determine whether the increase in this line provision for training and travel is for the up skilling of staff or whether most of this increase is associated with the regional conference in 2012. The up skilling of URCA staff is important to the sector as it is expected to reduce the dependency on external consultants and bring about greater cost efficiencies.

With the role of URCA expected to expand in the near to medium term as the regulator takes on responsibility for regulating other sectors, i.e. water and electricity, it is important to have greater visibility that the costs to be borne by operators in the ECS reflects the cost associated with that sector.

BTC notes from URCA's Work Plan for 2012, one of the planned projects is Consumer Advocacy and Awareness. As part of this Consumer Advocacy and Awareness, URCA will have a Public Consultation on Consumer Protection Regulation, will oversee the formation of a Consumer Advisory Council and 'conduct appropriate consumer advocacy initiatives and encouraging increased consumer empowerment and awareness'. Given the importance of this initiative, it would be very useful to have visibility in the relevant budget line item from which this initiative will be funded. The Advertising and Public Relations line item, which presumably is a likely candidate for funding this initiative has an increase of \$2,000 year on year in the 2012 operating budget. Certainly, BTC is by no means advocating increases, as there are a number of areas that URCA can probably explore for cost rationalization. Instead, BTC is arguing that there is a need for greater visibility within the budget and that more notes should be provided in the budget to explain year on year variances.

Further, BTC notes and looks forward to the promise of credit back from URCA to offset 2012 fees as promised.

SPECTRUM FEES

We note, the intention to increase Spectrum fees in 2013 and whilst we acknowledge that this is within the purview of the Minister, URCA is urged to use its influence to ensure that an already over taxed industry is not further hampered by the introduction of another set of excessively high fees.

URCA'S FEE SCHEDULE FOR 2012 - ECS 25/2011

We note the inclusion of the Premium Spectrum Bands at Table 6, "Annual Spectrum Fee". BTC wishes to be advised on the criteria being used by URCA to determine categorization of frequency spectrum into Premium and Standard and queries, what protection is afforded to service providers and customers from impromptu reclassification of standard bands.

CONCLUSION

In conclusion BTC is appreciative of the opportunity to provide comments/feedback on URCA's Draft Document on its Three Year Strategy and Annual Plan for 2012 and looks forward by the end of 2012 to a new Sector Policy.

BTC will continue to do its part in engaging the regulator on issues that are of importance to both entities as well as to the sector. While it is important that URCA is successful in meeting its targets for 2012, a successful outcome for a planned activity is not the mere 'ticking' of a box showing that the activity was carried out. A successful outcome for the sector is where consumers would have benefitted (i.e. improvement in consumer welfare), operators are able to earn returns on investment and equally importantly, the sector benefits by way of sustainable growth and development as a result of the activity. Further, regulation is 'local', and whilst it is always useful to take

account of best practices, the operating environment in The Bahamas is quite unique and external advisors should be tempered by local conditions. An activity that yields an outcome(s) in one jurisdiction may yield a totally different unexpected outcome in The Bahamas. The outcomes from a given activity can be a result of a range of variables, not least of which, could be the state of development of the communications sector across jurisdictions. In the case of The Bahamas, the sector is in the early stages of liberalization.

RESERVATION OF RIGHTS

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 these Comments 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 these Comments mean a waiver of any of BTC's rights in any way. BTC expressly reserves all of its rights.

**Prepared by:
The Legal, Regulatory Affairs & Carrier Services Division
The Bahamas Telecommunications Company Limited (BTC)
3rd February, 2012**