

**The Bahamas Telecommunications Company Ltd.**

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October 1, 2009

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 Public Consultation Paper on Preliminary  
Determinations on Class Licences, Exemptions &  
Types of Fees: Consultation Document ECS 03/2009**

BTC is pleased to forward its submission to URCA on the captioned Public Consultation and looks forward to URCA's determination in due course.

Yours sincerely,

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

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

FLJ/ksw

Encls.



**THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED**

## **Response To**

### **Public Consultation Paper on Preliminary Determinations on:**

- *Class Licences*
- *Exemptions*
- *Types of Fees*

***Consultation Document*** – ECS 03/2009

Legal, Regulatory and  
Interconnection Division  
**1 October 2009**

**General Comments**

BTC welcomes the opportunity that the Utilities Regulation and Competition Authority (hereinafter referred to as "URCA") has provided to all interested parties to comment on *the URCA Consultation on Class Licences, Exemptions, and Fees* pursuant to the Utilities Regulation and Competition Authority Act 2009 ("the Act").

Any questions or remarks that may arise as a result of BTC's comments may be addressed to:

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## **EXECUTIVE SUMMARY**

1. The Sector is presently in a key transition period to a new regime under the Communications Act 2009 (hereinafter referred to as the Comms Act) and existing Licensees are being requested to apply for new licences. The classes of licences which can be applied for are also new to the sector as are the exemptions. BTC commends URCA on its efforts to develop a transparent and well thought out technology-neutral, flexible licensing regime in the Commonwealth of The Bahamas.
2. Whilst the formula for the calculation of URCA's annual licence fee has not been the subject of a public consultation, in URCA's document ECS 12/2009 Fee Schedule released by URCA on 1<sup>st</sup> September 2009 a "preliminary" percentage of relevant turnover has been set in advance of a final determination. BTC is concerned that the fees to be levied on an Individual Operating Licensee in particular under the Comms Act are excessive and will impact the cost of doing business.

## **APPLICABILITY OF CLASS OPERATING LICENCE REQUIRING REGISTRATION**

3. The possession of a Class Operating License Requiring Registration is mutually exclusive with holding an Individual Operating License. Operators with networks operating under a Class Operating License Requiring Registration have the right to provide any carriage service, and the right to establish, maintain and operate one or more networks within, into, from and through The Bahamas; however, the consultation document is not as clear as it might be in indicating to which operators and to what services a Class Operating Licence Requiring Registration might apply.

## **ACCEPTING INTERFERENCE UNDER A CLASS SPECTRUM LICENCE**

4. Under a Class Spectrum Licence Requiring Registration, the Licensee is afforded certain rights to use predetermined radio spectrum in The Bahamas. Licensees are required to "...take all appropriate measures to ensure that its Radiocommunications Equipment is adequately protected from interference that may be caused by Radiocommunications Stations and Networks operating in the same geographical area or radio frequency band or in adjacent areas or bands",<sup>1</sup> i.e. to accept interference.

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<sup>1</sup> See URCA, Preliminary Determinations on: Class Licences, Exemptions and Types Of Fees, (Consultation Document – ECS 03/2009), Annex B – Conditions of a Class Spectrum Licence Requiring Registration, Condition 5.2.

5. Identical language appears in the Class Spectrum Licence Not Requiring Registration.<sup>2</sup>
6. BTC is of the view that this provision is imprecisely formulated. It should instead require adequate protection from interference "... that may be caused by Radiocommunications Stations and Networks operating *in compliance with any relevant Technical Conditions, including those established in URCA's guidelines*, in the same geographical area or radio frequency band or in adjacent areas or bands."<sup>3</sup>
7. There should be some bounds on the obligation of licensees to protect themselves from unpredictable and arbitrarily large volumes of interference, particularly if caused by parties operating in violation of URCA licence conditions or guidelines.
8. The Individual Licence is not a subject for the current consultation; however, BTC notes that Condition 5.2 of the Individual Licence contains the same language. BTC respectfully requests that URCA apply the corresponding change there as well.
9. The draft Spectrum Exemption describes secondary use by saying that such devices "... use shared spectrum without causing harmful interference to other users of radio spectrum".<sup>4</sup> It should note that these devices cannot claim protection from the primary user, and that they must cease interfering operations upon notice from URCA.

## **INTERCONNECTION TO THE PUBLIC NETWORK**

10. The Comms Act provides for exemptions to licence requirements which are determined by statute, and other exemptions which are determined by URCA. URCA has proposed to exempt self-provisioned services and

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<sup>2</sup> Ibid., Annex D, Condition 3.2.

<sup>3</sup> Cf. Article 4.4 of the ITU Radio Regulations: "Administrations of the Member States shall not assign to a station any frequency ... except on the express condition that such a station, when using such a frequency assignment, shall not cause harmful interference to, and *shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the Constitution, the Convention and these Regulations*" (emphasis added). See also Eurostrategies, *Study on radio interference regulatory models in the European Community*, November 2007.

<sup>4</sup> Annex F, Condition 1.6.

- closed user groups where the service in question “does not require interconnection to a Public Network”.<sup>5</sup>
11. Similar language appears in the Class Licence Not Requiring Registration.<sup>6</sup>
  12. BTC is of the opinion that the exemption and the condition should apply only to self-provisioned services and closed user groups that “*are not interconnected* to the Public Network”. A service that “does not require interconnection” might nonetheless be interconnected, and might therefore raise concerns about possible harm to the Public Network.

### **TYPES OF FEES**

13. The Consultation Document sets out URCA’s preliminary determination on fees.<sup>7</sup> The Consultation references the Comms Act which sets out a list of fees that can be levied by the regulator under the terms of Section 92(1) of the Comms Act, including:
  - (a) charges for particular services rendered by URCA in the performance of its functions or the exercise of its powers under this Act;
  - (b) fees to be payable for any application required under this Act or for the supply or making copies of documents;
  - (c) annual charges for licences to be calculated based on the licensee’s relevant turnover;<sup>8</sup> and
  - (d) other fees and charges for the administration and allocation of state assets

URCA has acknowledged that the range of fees that it can charge is broad under the terms of Section 92(1) and BTC is in agreement with this statement.

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<sup>5</sup> Consultation document, Annex E, Sections 1.5 and 1.6.

<sup>6</sup> Ibid., Annex C, Section 1.5.2.

<sup>7</sup> URCA, Preliminary Determinations on: Class Licences, Exemptions and Types Of Fees, (Consultation Document – ECS 03/2009) at p. 8.

<sup>8</sup> “Relevant turnover” is defined in Section 2 of the Comms Act as “... the gross receipts in money or money’s worth of the licensee [or exempted entity] attributable to ... the provision of a network or carriage service or use of any radio spectrum under any licence or exemption determination ...” For content providers, additional adjustments are made for advertising revenue and ancillary revenue.

14. Section 92(2) sets forth the charging principles by which URCA is to determine fees:

Any charges and fees determined and levied under this section shall:-

- (a) be set on an objective, non-discriminatory, transparent and proportionate basis;
  - (b) be published by URCA on its website (and any other form as it considers appropriate);
  - (c) seek only to cover a proportionate share of the relevant operating costs of URCA under subsection (d) for the performance of its duties under this Act. The fees for a licence shall be proportionate and be published in an appropriate and sufficiently detailed manner, so as to be readily accessible;
  - (d) be set to cover URCA's annual budgeted costs of performing URCA's functions and exercising its powers under this Act and the URCA Act but excluding those costs attributable to the performance of its functions under any legislation not pertaining to the regulation of the electronic communications sector; and to recover any deficit from previous years; and
  - (e) take account of any surplus in URCA's accounts carried over from the previous accounting year.
15. According to the Consultation, URCA intends to levy the following charges:
- 1. annual charges for licensees to be calculated on the licensee's relevant turnover under section 92(1)(c) of the Comms Act;
  - 2. fees for the provision of copies of documents under section 92(1)(b) of the Comms Act;
  - 3. fees under section 92(1)(d) of the Comms Act for the administration and allocation of spectrum;
  - 4. fees under section 92(1)(d) of the Comms Act for the administration and allocation of national telephone numbers;

5. other fees and charges under section 92(1)(a) of the Comms Act for particular services rendered by URCA in the performance of its functions and the exercise of its powers under the Comms Act, as may be notified to licensees requesting such services.<sup>10</sup>
16. URCA's annual charge based on a licensee's relevant turnover has been preliminarily determined to be in BTC's case 1.472% of annual relevant turnover<sup>11</sup>. This is more than double the amount paid by BTC under the Telecommunications Act 1999 and can be considered excessive given that other individual operating licences are to be immediately granted.
17. The fees intended to be charged by URCA must also be considered in the context of fees extraneous to URCA. URCA collects and administers a Communications licence fee on behalf of the Government. According to Schedule 3(1) of the Comms Act,<sup>12</sup> The Communications licence fee is equal to three percent of the licensee's relevant turnover (unless amended by the Minister).
18. The Communications licence fee and any spectrum fees are set pursuant to Sections 91 and 93 of the Comms Act, respectively. They apparently are not subject to the principles expressed in Section 92(2), and are collected by URCA from relevant licensees on behalf of the Government for payment to the Treasury and Treasurer respectively. Additionally, a Licensee who pays an URCA fee pursuant to Section 92 1(c) of the Comms Act is expected to pay a Utilities Appeal Tribunal fee which is yet to be determined.<sup>13</sup>
19. BTC is of the opinion that the fees that are based on the licensee's relevant turnover (being both the Communications licence fee and the URCA fee) represent a significant cost and an implicit risk to BTC. The consultation merely states that URCA will determine appropriate charges and fees from time to time, and will post them on its web site. Notably, this consultation does not determine the *level* of the annual recurring licence fee based on relevant turnover that is established in Section 92(1)(c) of the Comms Act and given the preliminary calculation amount BTC urges

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<sup>10</sup> URCA, Preliminary Determinations on: Class Licences, Exemptions and Types Of Fees, (Consultation Document – ECS 03/2009) at p. 9.

<sup>11</sup> Page 4 Fee Schedule: ECS 12/2009

<sup>12</sup> Page 81.

<sup>13</sup> Page 4 Fee Schedule ECS 12/2009



URCA to address the final determination for the calculation of the annual licence fee as soon as possible.

20. BTC is of the opinion that the multiple fees and their percentages being levied are a cause for concern. Given the full gamut of the fees required to be paid by an Individual Licensed Operator, BTC is concerned that a cap on fees ought to have been considered and adopted, as the levy of multiple fees may be prohibitive to the investment in new services.
21. Furthermore, BTC is also concerned that URCA's fees, added to the fees associated with doing business in the Commonwealth of The Bahamas such as Business License fees and Real Property taxes, as well as the Communications fee and Spectrum fee under the Comms Act and the Utilities Appeal Tribunal fees, could create barriers to entry into the market. Arguably these levies could also, in BTCs view, distort competition.

## **CONCLUSION**

22. It is to be noted that BTC has focused its comments on the fees as the Class Licenses and Exemptions which are also the subject of this consultation are not particularly relevant to BTC, however, BTC has referenced inconsistencies as identified.
23. In accordance with the principles of objectivity and transparency proportionately and non-discrimination outlined in Section 92(2) of the Comms Act, BTC recommends that URCA holds a Public Consultation on the methodology to be applied for fees to be levied pursuant to section 92 of the Comms Act and in particular for the annual licence fee to be paid to URCA by Individual Operating Licensees.
24. BTC expressly reserves the right not to comment wholly or in part on all or some of the issues at this time.