



**cablebahamas**

**RESPONSE TO**

**URCA DRAFT ANNUAL PLAN 2014  
ECS 20/2013**

**SUBMISSION BY**

**CABLE BAHAMAS LTD.**



Cable Bahamas Ltd, Caribbean Crossings Ltd. and Systems Resource Group Limited (collectively, “the Companies”) hereby submit their comments on the draft Annual Plan for 2014.

The Companies commend URCA for holding the meeting for stakeholders on January 21, 2014. This was a welcomed addition to the annual report process and an opportunity to understand URCA’s plans. It was also very timely to have the Ministry of Finance attend and discuss VAT and its application to the communications sector. We also commend URCA on the introduction of fixed number portability in November 2013 which is significant for improving the competitive landscape. It remains for URCA to be vigilant in ensuring that operators meet their commitments so that customers as well as operators derive the intended benefits.

As a further preliminary matter, the Companies wish to reaffirm their strong support for the establishment of an independent regulator that is administered by an experienced team of executives and staff, subject to Board supervision following the policies set by the Government. However, independence brings with it a special responsibility on URCA's part to ensure that its operations are efficient and its programmes properly prioritised and timed with due consideration being given to the cost burden on the industry participants that are responsible for URCA’s funding. Independence also requires the regulator to guard the trust that has been reposed with it. This is particularly important at a time of economic recession and financial challenges for The Bahamas and the electronic communications sector.

### **1. URCA’s Budget & Fees**

Because of the unusually broad degree of discretion that the URCA Act bestows on the Authority in relation to the setting of its budget, it is incumbent upon URCA to ensure that its operations and programmes are justified as a matter of need and priority in the relevant planning period. In the absence of a published ECS policy it is difficult to discuss with URCA the implementation priorities. It is also difficult for industry participants to gauge current and potential opportunities. We are certainly concerned about the change in the law which stipulates that the surplus is given to the consolidated fund. We contend that URCA should have done a better job of communicating the change in the provision to stakeholders, when it was being contemplated and when it actually happened. Between August 1’ 2009 – June 30, 2013, the industry understood that URCA received those funds on the basis that the sums are not subject to any law to be paid to any statutory fund and more importantly that any surplus would be applied to the following financial year or years.<sup>1</sup> Therefore, on July 31<sup>st</sup>, 2013 this unannounced and ceremonial confiscation of surplus to the consolidated fund amounted to a breach of the trust and legitimate expectation of stakeholders and taxation without representation. It would appear that URCA was remiss in asserting its independence and appropriately challenging the implementation of the new law. In light of this legislation it is the Companies position that URCA should not forecast increases or the implementation of VAT. The Companies take this position because if the increases do not materialize or VAT is delayed then there is a high likelihood that funds received from operators will be expropriated to the consolidated fund. central government already receives from operators a 3% Communications Fee, spectrum fees and business licence fees directly attributable to

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<sup>1</sup> Section 40, Utilities Regulation and Competition Authority Act.



our operations in the market. It is our preference that our investment is in the provision of services and reasonable prices to consumers. At the meeting on January 21, 2014, URCA indicated that it was obliged to budget more carefully to avoid a surplus and we accept that. However, the corollary is that there is an absence of incentive for URCA to manage its cost efficiently. Enhancing the efficiency of the electronic communications sector is the first policy objective listed in section 4(a) of the Communications Act (the “Comms Act”). URCA is an important part of the sector and, as such, its own operations should be as efficient as possible. This efficiency objective is also inherent in subsections 5(b)(ii) & (c) of the Comms Act, which require URCA to have due regard to the costs and implications of regulatory measures on affected parties and to ensure that its regulatory measures are efficient. It goes without saying that such measures include (though they certainly are not limited to) the fees that URCA assesses to cover the cost of its own operations, programmes and activities.

## **2. WORK PLAN**

URCA continues its emphasis on consumer protection and for 2014 is gearing towards the expiration of the cellular monopoly. We reiterate our willingness to work with URCA in improving the customer experience. It is our philosophy that objective and reasonable standards results in a better relationship and clearer expectations among all parties. We are supportive of URCA’s efforts to ensure that the public is provided with high quality services and products. We are customer focused and service oriented. We understand that the Bahamian market is interested in receiving state-of-the-art technology and we are committed to providing this as cost-effectively and expeditiously as possible. It is important that the regulatory process enables this to happen. This parlays into approval and enforcement processes that are efficient and timely.

### **Regulation of Retail Prices for SMP Operator - Rules**

In 2013, we urged URCA to move towards a different type of price regulation than the rules presently in place. We continue to urge URCA to do this. The consultation on the Review and Revision of the Regulation of Retail Prices for SMP Operators seems to create a more burdensome process. The resources and finances spent on this consultation would have been better spent on moving us to more modern type of price regulation. The proposed revision appears to be amendments that are manpower intensive and expensive which we contend will only exacerbate URCA’s manpower challenges. It will also increase the regulatory cost of operators and divert manpower from focusing on customer service and enhanced product offering to bureaucratic and administrative tasks and reliance on external consultants. It appears to us that URCA, contrary to section 5 of the Comms. Act and the concept of ‘light-handed regulation’, is increasing regulation and becoming heavy-handed. The process continues to inhibit operators’ ability to react quickly to opportunities which can benefit consumers. The process requires URCA to involve itself in an operator’s decision to change prices. The process is invasive, time consuming, arbitrary and expensive. We reiterate the statements of the Committee for the Privatisation of the Bahamas Telecommunications Company:

*The present regime for retail price regulation and its discretionary nature is unsuitable for use in modern, competitive communications market. The implementation of a new regulatory regime for communications in The*



*Bahamas provides an opportunity to introduce new policies for the regulation of retail prices.<sup>2</sup>*

### **Infrastructure Sharing**

We had observed in 2013 that a consultation on infrastructure sharing was not listed as a planned project for 2013. URCA has decided because of the expiry of the cellular exclusivity to include it in the 2014 work plan. It is interesting that URCA seemed not to consider it significant to support the implementation of the award of the bands in the 700 MHz, which occurred in May 2012, with infrastructure sharing requirements. The Companies understand that the regulations for facilities sharing will be limited to promoting the sharing of antennae and sites for base stations or the coordination of civil works and concur that this may be useful. We would not support a consultation on issues like unbundled local loop or similarly complex wholesale access obligations at this time.

### **ECS Policy for 2012 – 2015**

In 2013, the Companies expressed concerns about the lack of a revised ECS Policy for 2012 – 2015. In August 2013 the consultation on the ECS Policy ended and some six months later there has been no published ECS Policy. The Companies consider that the Comms Act was drafted such that URCA would have consulted with stakeholders on the policy, formulated and presented a revised draft policy to the Minister. If the Minister failed to start a consultation with URCA then after the prescribed time, a new policy would come into effect. The aim of the provision was to avoid situations where central government leaves URCA and the industry adrift. It appears that the roles of Government, URCA, UAT and stakeholders are not functioning as envisaged in 2009 and the entire legislative environment needs a review.

### **Cellular Liberalization**

URCA has emphasized its preparation for cellular liberalization on the basis of the draft sector policy and the expiry date of April 4, 2014. We encourage URCA to move with alacrity to establish the legal, operational and technical infrastructure for cellular liberalization. URCA should ensure that the end process allows scope for MVNOs.

### **SMP in Call Termination**

The Companies repeat last year's comments that a consultation relating to SMP in Call Termination should be given a very low priority. It need only be addressed if and when problems arise in respect of the pricing of fixed termination by operators other than BTC. URCA has informed the Companies and IPSI that it is not to change its current termination fee. However, BTC is charging its customers for calling SRG customers, whereas, SRG is absorbing, for its customers, BTC's cost for termination. For the time being, the relatively small shares of BTC's competitors, their consequently higher unit costs, and BTC's considerable degree of countervailing buyer power make the need for any further work in this area a matter of third-order importance, which can be postponed unless any issues develop.

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<sup>2</sup> Public Consultation on Retail Pricing Regulation in the Communications Sector ('Retail Pricing Consultation') – publication date 17 June, 2009.



### **Rate Rebalancing**

The continued provision of fixed telephony below costs is a matter that URCA needs to address. Certainly if the cellular mobile markets are foreclosed to other licensed operators than the electronic communications market competitive landscape is skewed heavily in favour of the dominant voice operator. The next cellular operator is unlikely to be offering services to the public within the next 24 months and so the fixed line market needs URCA's consideration.

### **Competition Complaints**

For participants in the electronic communications market, it is important that URCA acts in a timely manner when dealing with complaints generally and competition complaints specifically. Competition complaints have major commercial implications. Dilatoriness acts as a barrier to entry by increasing the cost of doing business. The complaint that SRG lodged against BTC in June 2012 remains unresolved. Since lodging the complaint, BTC has opened franchised stores and continues to reduce the discount it pays to its own card wholesalers because competition in the market is lessened. BTC is using its dominance in the fixed and cellular telephony market to leverage into ancillary markets such as the phone card distribution and resale. This affects operators but also phone card resellers and consumers by denying them choice.

### **Enforcement**

The Companies strongly urge URCA to include as a major initiative within its monitoring, enforcement and investigation activities the detection and control of electronic communications services that are being provided in The Bahamas unlawfully. Voice, video and satellite services can and should be provided lawfully. Further as part of the enforcement activities operators need to be compliant with the various regulatory measures. Number portability agreements and the reference access and interconnection agreement must be enforced. URCA should be swift to address digressions. The orderly regulation of competition hinges on adherence to the rules. There should not be a commercial premium for operators who fail to comply. Appropriate compliance measures should therefore be taken to protect consumers in the marketplace and ensure a level playing field for existing licensed providers and potential entrants through strong enforcement.

### **Legislation**

It is our submission that URCA should conduct a review of the URCA Act and the Comms Act. The objective should be to have the new legislation tabled before Parliament by 2015. The Companies have pointed out inconsistencies in the legislation and additionally there are some provisions enshrined in the Act which may be better suited for regulations or rules promulgated by URCA given the flexibility needed in this sector. As mentioned previously it appears that the roles of Government, URCA, UAT and stakeholders are not functioning as envisaged in 2009.

### **Universal Service**

The principal of economics and commercial reality is based on being efficient. Efficiencies are thought to lead to lower costs for consumers. The universal service as propounded by URCA is contrary to principals of economics and commercial reality and best practices. It appears to the Companies that it is contradictory to assert on the one hand that it is clear what the universal service obligations are and on



the other hand have a series of consultations relating to the framework and clarification of universal service obligations. The draft ECS Policy seems to obfuscate rather than elucidate the implementation of universal service. The Companies have since 2008 provided free off-air television to approximately 15 islands. Under the franchise licence granted by the Government in 1994, Cable Bahamas has provided cable television to educational, social and charitable institutions and continues to do so. It currently provides internet to 57 schools in the Bahamas. The Company understands the need for social inclusion in the information technology and is prepared to make its contribution to this landscape. The Companies want the universal service to be offered in a structured, reasonable and cost-effective way. The present formulation of universal service leaves accessing the service open to abuse and an estuary for revenue dissipation. The Companies suggest that the status quo is maintained until a review of the legislations and the market is completed and an efficient proposal is formulated.

### **Alternative Dispute Resolution**

The Annual Plan indicated that a consultation commenced in December 2013. We are not aware of that consultation and we are unable to locate it on URCA's website. We would be grateful for URCA's assistance in this regard.

### **Board of URCA**

The Government gazetted appointments to its boards and in respect of URCA in addition to the present Chairman appointed two other persons. URCA's website indicates that the Chairman has changed but Mr Morgan and Ms Doehler remain. URCA is budgeting for an 8% reduction in non-executive compensation due to one of the non-resident board member's appointment expiring. We would be obliged to know the appointment dates and expiration dates of the present board members and the proposed sequence of the new appointments.

### **Public Consultation**

We have notice that URCA does not appear to have a consistent procedure when it comes to publishing responses to public consultations. For example, the responses to the SuperBasic consultation which closed in October, 2012 were not published until the Statement of Results was published in February 2013. The Consumer Protection Regulations closed in August, 2013 and the comments from the public were published in December 2013 simultaneous with the Statement of Results and the Regulations. The Regulations on Price Regulated Services consultation closed on January 3, 2014 and the comments from the public have been published, even though the Statement of Results or the final regulations are still pending. The annex contained in the Draft Consultation Procedure Guidelines<sup>3</sup> illustrates how the consultation process will work and includes a stage for publication of responses. It is our suggestion that the responses from the public are published as soon as the consultation has closed. The Companies are interested in reading the responses independent and irrespective of URCA's analysis and conclusion.

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<sup>3</sup>Draft Consultation Procedure Guidelines (ECS 01/2009)



## **Research**

We also suggest that URCA conduct and publish more research on the electronic communications sector. It is our contention that this will create fundamentally improved policies and decisions which are fit for purpose.

## **CONCLUSIONS AND NEXT STEPS**

We urge URCA to take such steps to have the ECS Policy published. That it reviews its budget and reduce the 16% increase by 50%. Commence a review of the various legislations in 2<sup>nd</sup> quarter of 2014 and conclude it in 4<sup>th</sup> quarter of 2014. The plans for universal service be postponed until 2015. Similarly further work in SMP in call termination be delayed until 2015. The stakeholders meeting subsequent to the publishing of the draft Annual Plan is incorporated annually into the process and given the major financial contribution that ECS makes to central government and the economy include the Minister of for ECS making an address. The Companies look forward to working with URCA and other industry stakeholders in this continuing process.

Respectfully submitted,



Legal Counsel  
Cable Bahamas Ltd.

