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CABLE BAHAMAS LIMITED

**APPLICATION FOR PERMANENT PRICE CHANGE FOR SUPERBASIC
CABLE TELEVISION SERVICES**

ECS23/2012

Submitted by

Cable Bahamas Ltd.

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I Introduction

Cable Bahamas Ltd (“CBL”), including its affiliates Caribbean Crossings Limited and Systems Resource Group Limited, hereby responds to the Utilities Regulation and Competition Authority’s (“URCA”) Consultation Document on “*Cable Bahamas Limited: Application for Permanent Price Change for SuperBasic Cable Television Services*” (ECS 23/2012) (the “Consultation Document”), which was issued on 04 September 2012. The objective of the Consultation Document is to seek comment from the public on CBL’s Application, dated 01 December 2011, to increase the monthly price of its residential “SuperBasic” cable television service (currently marketed at “RevTV Prime”) by \$8 from its current price of \$30. In the Application, CBL also proposed a similar increase in percentage terms in the monthly price of CBL’s commercial “SuperBasic” service (currently marketed at “RevTV Business Prime”).

The Consultation Document focussed on the following broad topics:

- the regulatory framework applicable to the pricing of the SuperBasic service;
- the Application's compliance with the Pricing Rules; and
- the legislative requirement related to the Universal Service Obligation (“USO”) to provide an affordable basic television service.

Before addressing issues raised in the Consultation Document, CBL notes at the outset that it considers the requested SuperBasic price increase to be fair and reasonable. Under the current SuperBasic price of \$30, revenues fall short of the cost of providing the service, including the allowed rate of return on mean capital employed (i.e., the current price is below cost). If the requested price increase is approved, it would allow the price of SuperBasic to be more reflective of the cost of its provision, including a fair return on CBL’s underlying capital investment. In addition, CBL considers that the price of SuperBasic would remain generally affordable to consumers in The Bahamas, as is supported by the extensive evidence in this regard provided with CBL's Application.¹

¹ As provided in CBL's benchmarking study of cable TV prices in 24 Caribbean jurisdictions (provided in the Application) as well as its submission on the subject of affordability which was lodged with URCA on 11

At the same time, CBL is sensitive to the concerns raised by URCA in the Consultation Document that, in the absence of a lower-priced less-inclusive USO-related television service package. For this reason, CBL is currently engaged in USO discussions with URCA regarding the provision of a less-inclusive USO-related basic television service ("BTS"). The BTS would take into account the mandated USO-related affordability requirement. CBL submits that the USO-related affordability requirement does not also apply to the SuperBasic service and, therefore, should not apply in the in the context of CBL's present SuperBasic price increase application.

In what follows, CBL provides its comments on the issues raised in the Consultation Document regarding the Application. For this purpose, CBL follows the same general structure as the Consultation Document. CBL notes that failure to address any specific issue raised or assertion made in the Consultation Document does not imply agreement on the part of CBL.

II Issues Raised in the Consultation Document

1. Regulatory Framework Applicable to SuperBasic

In Section 2 of the Consultation Document, URCA notes that it concluded in April 2010 that CBL possessed significant market power ("SMP") in the provision of pay TV services, specifically including SuperBasic (the "SMP Determination").² URCA further noted that, as a result of this finding, it determined that SuperBasic would be a Price Regulated Service and, therefore, subject to URCA's Pricing Rules.³

URCA also indicated in the Consultation Document that, being a Price Regulated Service, any changes to the price of the SuperBasic would be considered in relation to the objectives of the Communications Act ("Comms Act") and the Electronic Communications Sector ("ECS") Policy. In this respect, URCA specifically referenced the following electronic communications policy objectives set out in section 4(a) and (b) of the Comms Act:

May 2012 (Annex 2 to the Consultation Document).

² URCA, *Obligations Imposed on Operators with Significant Market Power (SMP) –Final Decision*, ECS 11/2010, 22 April 2010.

³ URCA, *Regulation of Retail Prices for SMP operators – Rules*, ECS 15/2010, 22 April 2010.

“to further the interests of consumers by promoting competition and in particular –

(i) to enhance the efficiency of the Bahamian electronic communications sector and the productivity of the Bahamian economy;

(ii) to promote investment and innovation in electronic communications networks and services;

(iii) to encourage, promote and enforce sustainable competition; and

to further the interests of persons in The Bahamas in relation to the electronic communications sector by –

(i) promoting affordable access to high quality networks and carriage services in all regions of The Bahamas;

(vi) promoting availability of a wide range of content services which are of high quality.”

URCA also cited the USO provisions set out in section 119(1)(e) and paragraph (1)(b)(i) and (iii) of Schedule 5 of the Comms Act in relation to BTS and, more broadly, paragraph 54 of the ECS Policy with respect to USO and similar arrangements.

Lastly, URCA made reference to section 40(3) of the Comms Act, which governs SMP licensees, which among other things requires that:

(a) any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits;

(b) shall take into account the investment made by the relevant licensee and allow the licensee a reasonable rate of return on capital efficiently employed, taking into account the risks involved;

(d) may also take account of prices available in comparable markets.

Taking these factors into account, URCA indicated that one of its key considerations in conducting its review of CBL's Application has been "its responsibility to protect consumers from unwarranted price increases: that is, ensuring the proposed price increase does not lead to prices above the competitive level and/or prices which are detrimental to particular persons or a particular description of persons, in relation to their ability to subscribe to the service."

These considerations are all part of the overall regulatory framework URCA considers as being applicable to the pricing of SuperBasic. CBL has several concerns in regard to this framework as interpreted and applied by URCA:

- First, CBL notes that the USO provisions relating to BTS are the subject of an ongoing public consultation process launched by URCA.⁴ In its submission to the USO consultation,⁵ CBL has raised numerous concerns with URCA's proposed clarifications and contemplated implementation of USO requirements pertaining to BTS, which CBL will not repeat in the current consultation process. CBL notes, however, that it is currently engaged in USO discussions with URCA regarding the provision of a less-inclusive USO-related BTS.
- Second, CBL submits that the objectives of the Comms Act should be implemented in a balanced manner. One objective should not be pursued to the exclusion of others. In CBL's view, URCA has focussed almost exclusively on the objective of promoting affordability at the expense of all other noted objectives. Setting aside the fact that the concept of "affordability" is not defined, if URCA does not approve the proposed price increase because of affordability concerns that would result in CBL having to continue to provide SuperBasic below cost. In such an instance, the pursuit of the affordability objective would be contrary to – and, indeed, would serve to undermine – the equally important objectives of promoting competition, efficiency, productivity, investment and innovation in cable television services as well as promoting the availability of a wide range of content services of high quality.
- Third, the final consideration noted by URCA also reflects what amounts to opposing objectives. On one hand, URCA states it is responsible for ensuring consumers are protected from unwarranted price increases. However, nowhere in the Consultation Document does URCA suggest that the SuperBasic prices proposed by CBL raise any such concerns. Yet, at the same time, URCA states that prices should not be "detrimental to particular persons or a particular description of persons, in relation to their ability to subscribe to the service." It is unclear what this suggested price test would involve in practice. It is not defined or discussed further in the Consultation Document. In any event, in CBL's view such a condition appears to be inconsistent with the objectives of the Comms Act.

⁴ URCA, *Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) Under Section 119 and Schedule 5 of the Communications Act 2009*, Consultation Document, ECS 12/2012, 30 March 2012.

⁵ CBL's response to the USO Consultation Document ECS 12/2012 filed 29 June 2012.

CBL urges URCA to adopt a balanced approach when assessing the merits of CBL's Application on the basis of the overall objectives and provisions of the Comms Act.

2. Compliance of CBL's Application with the Pricing Rules

In Section 3 of the Consultation Document, URCA provides its review of CBL's Application. In this respect, URCA noted that paragraphs 16 to 20 of the Pricing Rules describe the minimum informational and data requirements that must accompany any request for a permanent price increase or decrease. After having reviewed CBL's Application against these requirements, URCA concluded that the Application is "complete" in this respect.

The Pricing Rules also require that URCA ensure that any proposed price change for a Price Regulated Service such as SuperBasic is not "anti-competitive" – i.e., the proposed price change (i) does not result in predatory pricing and (ii) will not result in a margin squeeze on other operators.

In the first respect, URCA noted that since the Application under review is for a price increase rather than decrease, "concerns about price predation would not typically arise". At the same time, URCA also states that, given its 2010 SMP Determination, "CBL faces no actual or potential competition in this relevant market" (i.e., the pay TV services market, including SuperBasic). It would appear that URCA added this remark to seemingly lessen anti-competitive concerns that might otherwise arise from holding the price of SuperBasic below cost.

CBL notes, however, that URCA's statement about the extent of competition in the pay TV market is outdated and is currently factually incorrect. There are a quickly growing number of competitive video entertainment alternatives available to Bahamian consumers today. These include satellite, Internet Protocol-based televisions ("IPTV"), online services (pay and free) video services and free over-the-air ("OTA") television:

- **Satellite TV:** Customers throughout The Bahamas have had access to satellite TV services for 30 years (well before the arrival of cable TV service). Satellite TV has represented a long-standing form of actual competition in the pay TV services market in The Bahamas. According to CBL's estimates, there are currently some 30,000 satellite TV subscribers in The Bahamas today,

representing market share of roughly 30%. In 2009, when URCA conducted its market analysis for its SMP determination, satellite TV subscribers in The Bahamas were estimated to be close to 20,000.⁶

- **IPTV:** The Bahamas Telecommunications Company (“BTC”) recently announced that it plans to launch an IPTV service in early 2013, which will compete directly with CBL's pay TV services.⁷ The service will be provided by virtue of BTC's near-completed \$60 million next generation network upgrade. In reference to the planned IPTV service, BTC's CEO stated that:

"We feel that we can offer a product that is as good as what is currently available, but at a much more affordable price. We want to focus on that. Deals have been done with the content providers. We provide this service already in other markets. So we expect to be competitive."

- **Online Video Services:** There is a rapidly growing number of online video entertainment services (including feature films and television programs) available today compared to when URCA conducted its SMP analysis in 2009. For instance, Netflix is available to Bahamians for \$7.99 per month.⁸ YouTube provides extensive free video content as well as pay per view feature film content. An extensive range of video content is also available from Apple iTunes. There are many other online video entertainment options available as well.⁹
- **OTA TV:** As URCA notes in the Consultation Document, free OTA TV is available in The Bahamas to a large percentage of the population (close to 85%). Consequently, OTA represents an alternative to pay TV services for most Bahamian households. At the same time, however, it is also worth noting that ZNS currently provides live streams of its programming over the Internet and, therefore, it is available to all Bahamians with an Internet connection.

Therefore, in view of these alternatives, the suggestion that CBL faces no actual or potential competition to its SuperBasic service is simply incorrect.

⁶ URCA, *Position Paper – Regarding Types of Obligations on Bahamas Telecommunications Company Ltd. and Cable Bahamas Ltd. under S.116(3) of Communications Act, 2009*, ECS 07/2010, 19 March 2010.

⁷ Nassau Guardian, *BTC to launch TV trail early 2013*, 27 September 2012.

⁸ Nassau Guardian, *Netflix raises the curtain*, 13 September 2011.

⁹ See, for instance, Yahoo! Finance, *Research and Markets: over the Top (OTT) Internet Television*, 24 August 2012. Not all existing online video services are necessarily accessible in the Bahamas. See: <http://finance.yahoo.com/news/research-markets-over-top-ott-161400267.html>.

Moreover, if URCA does not approve the proposed price increase, it would result in CBL having to continue to provide SuperBasic below cost, which would be inconsistent with the provisions in the Pricing Rules as well as the objective of promoting competition as set out in the Comms Act.

As to the second anti-competitive test included in the Pricing Rules, CBL notes that it is not required to nor does it provide wholesale products and services to competing pay TV service providers. Therefore, as URCA recognized, a margin squeeze concern as contemplated under the Pricing Rules does not apply in the case of CBL's Application.

CBL notes that URCA raised no significant concerns with the financial analysis presented in the Application in support of CBL's proposed price increase.

CBL also notes that URCA indicated that the price benchmarking study provided in CBL's Application (which was based on a survey of cable TV service prices in 24 Caribbean jurisdictions with similar characteristics to The Bahamas) "appears to be based on a reasonable methodology". As noted in CBL's benchmarking study, the average current price for comparable cable packages from benchmarking jurisdictions was \$37.60 per month which is in line with the proposed increase the monthly price for residential SuperBasic from \$30 to \$38.

However, URCA raised the concern that the benchmarking study did not provide any indication as to the degree to which prices for cable TV services in the 24 surveyed Caribbean jurisdictions are "cost oriented".¹⁰ In response, CBL notes that as far as it is aware few if any of the 24 surveyed Caribbean jurisdictions regulate the prices of pay TV services. Consequently, the surveyed prices are set through market forces rather than regulation. Therefore, on average, they provide a reasonable estimate of the competitive level of prices for cable TV services in the Caribbean Region, which are directly comparable to CBL's SuperBasic service. The study shows that, at the current price of \$30, SuperBasic is well below the observed average market price in the Region. This is not surprising since CBL's Application also demonstrates that the current price SuperBasic is also below cost.

¹⁰ Consultation Document, page 11.

Overall, based on its initial analysis, CBL notes that URCA appears to consider CBL's Application to be generally reasonable given that in Section 5 of the Consultation Document (page 25), URCA concludes that:

- *The application is complete relative to the minimum information requirements specified in the Rules.*
- *It appears that the level of the price increases requested by CBL is designed to align the overall revenue from SuperBasic with the underlying fully allocated costs incurred by CBL in provisioning the service.*
- *The underlying costing information provided by CBL appears to be in line with CBL's accounting separation methodologies and principles.*
- *The proposed price increase appears reasonable relative to CBL's specific financial information and supporting information from other relevant markets.*

3. USO-related Affordability Requirement

The issue of affordability should in principle apply solely in the context of a USO legislative requirement. However, the bulk of the remainder of the Consultation Document deals with the issue of affordability in relation to the residential SuperBasic service. Before addressing the specific affordability issues raised by URCA, CBL notes that there is no definition of "affordability" in the Comms Act which URCA can readily apply. Consequently, URCA found it necessary in the Consultation Document to attempt to construct a definition of or set of criteria to assess affordability.

There are alternative approaches that can be followed in this respect. A product or service that is purchased by the vast majority of households can be viewed as being "generally" affordable. After all, for a household to purchase the product or service in question, the marginal utility derived from it must at least equal or exceed its price. If it did not, consumers would allocate their expenditures to alternative products or services of greater relative value. In this case, affordability is a reflection of market demand. In contrast, a more limited or targeted approach could also be taken under which only a subset of households are considered. At market-based price levels, demand for many products and services may very limited in the case of low-income households, for instance. As a consequence, these same products and services could be considered to be unaffordable to one degree or another to some low-income households simply because they are purchased by few if any such households. On this

basis, many services – both essential and non-essential in nature – could be considered unaffordable to some low-income households at market-based price levels.

URCA has followed the latter approach in the case of SuperBasic service. It has focussed on what the lowest-income households may be able to afford, absent any information relating to the demand for pay TV services relative to other products and services. The implication of this approach is that the price of SuperBasic could be held below cost for "all" households (regardless of their ability and willingness to cover the cost of the service) so that the service may be potentially affordable for the "lowest-income" households (regardless of the demand for the service among those same households). Such a policy would be contrary to the objectives of the Comms Act in that it perpetuates market inefficiencies and undermines investment, innovation and competition.

CBL strongly disagrees with such a low-income focussed affordability requirement to setting the price of the SuperBasic service for residential customers and, as noted, considers that the adoption of such an approach is inconsistent with the overall objectives of the Comms Act. As noted above, CBL is currently engaged in USO discussions with URCA regarding the provision of a less-inclusive USO-related BTS, which would take into account the mandated USO-related affordability requirement. CBL submits that while USO-related affordability requirement may be applied in the case of the BTS, it should not also apply to SuperBasic.

General Concerns with URCA's Affordability Analysis

CBL has several concerns with the URCA's affordability analysis as set out in the Consultation Document.

- First, CBL notes that URCA cites several potential alternative definitions or concepts of "affordability" in the Consultation Document.¹¹ While each differs in various respects, URCA has clearly focused on definitions that make specific reference in one way or another to "low income" households or individuals. The examples cited relate to telephony, Internet, broadband and postal services, but not pay TV services. URCA also referred to the Encarta English Dictionary as a potential source for a definition of affordability. However, despite the various examples, no clear and practical affordability criterion or set of criteria are provided by URCA.

¹¹ Consultation Document, page 17.

Consequently, the question of what may be considered "affordable" remains a vague and subjective concept based on URCA's analysis of the issue provided in the Consultation Document.

- Second, URCA takes issue with the quantitative indices of the affordability of residential SuperBasic provided by CBL in its Application and supporting submissions. These include domestic and international benchmarking indicators. With respect to the domestic indices, these include (i) the rate of inflation together with the real rate of change in the price of SuperBasic since it was introduced in 1995, (ii) GDP growth together with the real rate of change in the price of SuperBasic since 1995, (iii) the share of the cost of SuperBasic in an average household budget since 1995. With respect to international benchmarking indices, these include comparisons of (i) basic television service price levels and (ii) basic television service prices as a percentage of GDP per capita. These are standard quantitative indices that can be used to assess affordability, all of which demonstrate that SuperBasic is generally affordable in respect of both existing and proposed price levels.
 - In terms of the **domestic indices**, the evidence shows that the "real" (inflation-adjusted) price of SuperBasic has declined significantly year-over-year since it was launched in 1995 and that GDP per capita has grown significantly while the price of SuperBasic has remained frozen. CBL considers that both of these factors indicate that SuperBasic is far more generally affordable today than in 1995. URCA discounts this evidence by suggesting that the \$30 SuperBasic price may not have been affordable to the general public in 1994 and, despite being frozen for the last 18 years, is still not affordable today. It is worth recalling that \$30 Super Basic price implemented in 1994 was set by the Government as a condition of CBL's licence. This is no reason to believe that the Government would have mandated a price that would have been considered generally unaffordable at the time. However, the fact that SuperBasic subscribership levels increased from zero to close to 50,000 within five years of its launch (during which time the network was being built out) contradicts URCA's suggestion that the service may have been generally unaffordable in the mid 1990s.
 - In terms of **international comparisons**, the evidence shows that the current price of residential SuperBasic is below the average basic cable TV price measured for 24 directly-comparable Caribbean jurisdictions. Similarly the ratio of the price of SuperBasic to per capita GDP is also lower than the average comparable ratio for the same 24 Caribbean

jurisdictions. Again both of these measures suggest that the price of SuperBasic is both reasonable and generally affordable. URCA also discounts this evidence by suggesting that cable TV services in the 24 surveyed Caribbean jurisdictions may be considered a luxury rather than an essential service and, therefore, not necessarily "affordable for all". No evidence was provided by URCA in support of this claim. In any event, given the large number of jurisdictions surveyed and the fact that the surveyed prices are effectively market-based, CBL submits that there is no reason to believe that the surveyed prices, on average, are not generally affordable within the jurisdictions surveyed. Moreover, it bears repeating that the current price of SuperBasic is well below the average for the 24 surveyed Caribbean jurisdictions, and the proposed increase would leave the price in line with the average.

- Third, URCA downplays the fact that there are over 69,000 SuperBasic subscribers in The Bahamas as being evidence of affordability. URCA suggests that some customers may subscribe to the service "irrespective of whether the price charged imposes hardship and therefore high subscribership rates do not ensure that price levels are affordable". This suggested notion of affordability is at odds with basic economics. As noted earlier, any rational consumer who purchases a product or service must place a value on it that is at least equal to its price. There is little doubt that all consumers would prefer to pay less for any product or service they purchase, and increase their consumer surplus in the process. But to suggest that a consumer would purchase a product or service that is beyond their budget – i.e., unaffordable by definition – makes no economic sense. Such an arbitrary notion should not be used to establish the definition of or criterion for affordability.
- Further, the fact that there are in the order of 69,000 SuperBasic subscribers as well as another roughly 30,000 satellite TV subscribers indicates that a very high percentage of households subscribe to some form of pay TV services in The Bahamas (given that the total number of households in the country is roughly 104,000). In CBL's view, this is clear evidence that pay TV services, specifically including SuperBasic, are generally affordable.

In sum, CBL submits that the evidence it provided in its Application and supporting submissions demonstrates that the current and proposed SuperBasic prices are and, if approved in the latter case, would be generally affordable.

III Conclusion

CBL considers the requested SuperBasic price increase of \$8 to be fair and reasonable. If approved, it would allow the price of SuperBasic to be more reflective of the cost of its provision, including a fair return on CBL's underlying capital investment. Approving the Application would also be fully consistent with provisions of the Pricing Rules as well as the overall objectives and principles set out in the Comms Act.

Furthermore, it is worth noting that this Application represents CBL's fourth attempt since 1995 to seek regulatory approval for an increase in the price of Super Basic. CBL submits that there is no justification for denying an increase in the price given the evidence included in CBL's Application and the fact that the price has now been frozen for almost 18 years.

As noted at the outset, CBL is currently engaged in USO discussions with URCA regarding the provision of a less-inclusive USO-related BTS. The contemplated BTS would take into account the mandated USO-related affordability requirement. CBL submits that the USO-related affordability requirement should not also apply to SuperBasic and, therefore, should also not apply in the in the context of CBL's present SuperBasic price increase application.

Respectfully Submitted:

A handwritten signature in black ink that reads "Judith Smith". The signature is written in a cursive, flowing style.

Judith Smith
Legal Counsel