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By Hand and E-mail

April 12, 2013

Mr. Stephen Bereaux
Director of Policy and Regulation
Utilities Regulation & Competition Authority
Nassau,
Bahamas

Dear Mr. Bereaux

Re: Review of Retail Pricing Framework

Cable Bahamas Ltd and its affiliates (“CBL”) welcomes the opportunity to provide this opening submission on the above-referenced matter in response to URCA's letter of 1 March 2013. CBL understands that URCA will take CBL's and other parties' opening submissions into account in preparing a corresponding consultation document (the “2013 Consultation”).

CBL considers that the initiation of this process is timely. Almost four years have passed since the Committee for the Privatisation of The Bahamas Telecommunications Company Ltd issued the comprehensive *Public Consultation on Retail Pricing Regulation in the Communications Sector* on 17 June 2009 (the “2009 Consultation”), which proposed a series of initiatives, including the adoption of price cap regulation. The 2009 Consultation further proposed the adoption of "transitional arrangements" for six to twelve months prior to any implementation of price cap regulation. URCA concluded the 2009 Consultation process when it issued the *Statement of Results: Consultation on a new Price Regulation Regime for the Communications Sector* on 21 September 2009 (the “2009 Results”). In the 2009 Results, URCA did not provide a formal decision on any specific question raised or proposal made in the 2009 Consultation, noting that such implementation in the near future was not possible due to the "high data and information requirements". Hence, URCA noted that interim arrangements would be issued as part of the SMP obligations framework and, subsequently, on 22 April 2010, issued *Regulation of Retail Prices of SMP Operators – Rules* (the “Pricing Rules”).

CBL considers that given the numerous and comprehensive consultations that URCA has since completed – including those dealing with market reviews, SMP obligations and accounting separation and cost accounting matters – there is now more than sufficient data and information to move beyond the interim arrangements reflected in the Pricing Rules. Moreover, CBL notes that URCA's Annual Plan for 2013 includes plans to conduct updated market reviews. The more current data and information collected

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through that planned process should also be used to guide URCA's review of the retail pricing framework and its assessment and determination of the nature and extent of changes to the to the Pricing Rules.

In what follows, CBL provides its views on key issues that should, at a minimum, be addressed in the 2013 Consultation. CBL's comments in this respect are offered without prejudice. CBL intends to provide more specific proposals, with supporting justification, in the context of the forthcoming 2013 Consultation.

ISSUE #1: Ensuring that *ex ante* price regulations are efficient and proportionate

Section 5 of the Communications Act (the "Act") states that “regulatory and other measures shall be introduced... having due regard to the costs and implications of those regulatory and other measures on affected parties” and that such “regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory.” In CBL's view the interim arrangements reflected in the Pricing Rules are neither efficient nor proportionate. They are better suited for the monopoly environment of the past rather than the competitive communications marketplace of the present and near future.

CBL considers that a new retail pricing framework should be established with a clearly defined set of policy objectives. While the precise set of objectives should be subject to consideration in the 2013 Consultation, they could include for instance: (i) reliance on market forces to the greatest extent possible, (ii) fostering of competition and innovation, (iii) promoting efficiency and investment, and (iv) minimizing regulatory burden to the greatest degree practicable.

There are at least two price regulation options that should be considered individually and, if necessary, in combination to meet these objectives: (i) price cap regulation and (ii) streamlined pricing rules (i.e., a modified version of the existing Pricing Rules).

Price Cap Regulation

The 2009 Consultation provided a detailed assessment of the relative merits of price cap regulation and traditional rate of return ("ROR") regulation (the current Pricing Rules are effectively a form of ROR regulation using the currently established cost separations methodology to determine the regulated rate base). Numerous shortcomings with ROR were highlighted in the 2009 Consultation, including noting that the regulatory approach provides poor efficiency incentives and results in a significant regulatory burden. In contrast, where *ex ante* telecommunications service price regulation exists today, the 2009 Consultation noted that ROR regulation has now been largely replaced by price cap regulation (as in the case of the U.S, U.K. and numerous jurisdictions in the Caribbean). The 2009 Consultation also highlighted the superior efficiency incentives provided under price cap regulation and, moreover, specifically concluded that “Price cap regulation is considered to be the most appropriate form of regulation for use in The Bahamas.”

CBL agrees with the assessment and conclusion set out in the 2009 Consultation. CBL considers that price cap regulation is unquestionably superior to ROR or other types of earnings-based regulation. In CBL's opinion, consistent with international best practice, price cap regulation should be considered as an alternative to the current Pricing Rules in whole or part in the forthcoming 2013 Consultation. A key benefit of adopting price cap regulation is that it provides the flexibility for SMP operators to implement price changes in a quick and straightforward manner in response to market developments as long as the price changes are compliant with all established price cap rules.

Streamlined Pricing Rules

As well, as either an alternative to or in combination with a price cap mechanism, CBL considers that URCA should also explore alternative approaches to improve and streamline the existing Pricing Rules as they apply to applications for (i) permanent price changes, (ii) special offers or discounts, (iii) introducing or changing the price of bundles of price regulated services and (iv) introduction of new services as part of the 2013 Consultation. For instance, methods could potentially be established to significantly expedite or even grant immediate final or, at least, interim approval to permanent price change requests where no policy or competition-related matters are likely to arise. Where they do, on the other hand, a detailed evaluation process would be warranted. Two categories of price change requests could therefore be established in this respect: the first type would involve simple and straightforward price changes, raising no policy or competition-related matters and the second type would cover all others which would require additional time to review and approve. Similarly, measures could also be adopted to significantly expedite the approval process for or even grant automatic approval to promotions, new service introductions and bundling offers that satisfy pre-established conditions. The specific nature of these measures should be evaluated in the 2013 Consultation.

CBL notes that URCA could also consider using price caps and streamlined pricing rules in combination. In this case, however, clear criteria would be required to determine which price regulation mechanism would be applicable for individual or classes of price regulated services.

ISSUE #2: Clarification of the pricing rules for USO services

CBL considers that significant legal and regulatory uncertainty arises from the interplay of the *ex ante* retail pricing framework under Part VI of the Act, under which the Pricing Rules are issued, and the pricing-related aspects of the USO framework under Part VII of the Act. Going-forward, legal and regulatory certainty would be improved by codifying the price-related processes and mechanisms for the USO framework.

In this respect, CBL considers that there is a need to review and codify the treatment of two categories of USO services. The first category includes USO services that are also

price regulated services. For instance, CBL's SuperBasic service currently falls into this category based on URCA's recent decision on CBL's application for a permanent price increase for SuperBasic service. The current Pricing Rules include no reference to designated USO services and, therefore, provide no guidelines as to how a price-related application for such services should be filed and the criteria that URCA would take into account for their evaluation. This omission should be rectified. CBL recommends that the 2013 Consultation consider alternative approaches for developing and codifying the specific affordability criteria that would be used to assess proposed price changes to USO services in this category and also the price regulation mechanism it would apply to such services (e.g., price cap or other pricing rule).

The second category includes USO services that are not a price regulated service. The same corresponding CBL concerns outlined above hold for this case. For completeness, any new pricing-related provisions related to services in this category should also be considered as part of the 2013 Consultation.

ISSUE #3: Need for additional *ex ante* price-related competitive safeguards

With competition increasing in many sectors of the Bahamian communications sector and soon coming to the mobile sector, CBL considers that it is important that the *ex ante* retail pricing framework include adequate *ex ante* competitive safeguards. CBL's main concern in this respect is that if adequate *ex ante* competitive safeguards are not included in the framework, but rather are left for *ex post* prosecution, there is a risk that significant competitive market damage could occur well before any *ex post* remedies are implemented, given the potential lag in their implementation. For instance, the Competition Guidelines state that URCA would "... seek to resolve the competition complaint within an indicative administrative timetable of up to twelve (12) months from starting an investigation."¹

The current Pricing Rules include *ex ante* safeguards to protect against predatory pricing, margin squeezes and unfair cross-subsidy. With the impending introduction of mobile competition, CBL also considers that *ex ante* safeguards to guard against anticompetitive forms of price discrimination should also be in place to protect and foster emergent competition in the mobile sector. The Competition Guidelines recognize the potential for anticompetitive forms of price discrimination, an example of which includes the following:²

In mobile communications a common form of price differentiation is between the prices for on-net and off-net calls. Such differential pricing can be observed in competitive markets and may be efficient. However, it may be used anticompetitively by larger operators to attempt to exclude smaller operators from the market.

¹ URCA's 17 March 2010 Competition Guidelines, *ECS COMP. 9 – How to make a Competition Complaint - Guidance on Investigation Procedures*, page 73.

² Ibid, *ECS COMP. 7 – Abuse of a dominant position – substantive guidance*, page 55, para 58.

Given the prevalence of off-net/on-net price discrimination in other jurisdictions, and the possibility that this practice may be used anticompetitively, CBL strongly recommends that URCA consider introducing the corresponding *ex ante* competitive safeguards as part of the 2013 Consultation. Of course, the need to apply this *ex ante* safeguard would only arise in a limited number of circumstances (when price changes raise policy or competition-related issues).

ISSUE #4: Clarification of when/whether *ex post* competition provisions apply to price regulated services subject to the *ex ante* retail pricing framework

With competition increasing, CBL notes that additional legal and regulatory uncertainty may also arise from the interplay of the *ex ante* retail pricing framework under Part VI of the Act, under which the Pricing Rules are issued, and the *ex post* competition provisions under Part XI of the Act. The legal uncertainty relates to the *ex post* application of price-related competition provisions under Part XI in cases where SMP operators are subject to the Pricing Rules. CBL considers that URCA should clarify the scope and application of the *ex post* competition provisions under Part XI of the Act.

By way of example, when applying for a permanent price decrease for a price regulated service, the current Pricing Rules include *ex ante* safeguards to protect against predatory pricing. However, the Competition Guidelines also address matters relating to predation and, in particular, they include a discussion of when predation occurs and the factors that URCA would consider in assessing an allegation of predation.³ The Competition Guidelines consider the matter from an *ex post* perspective, in that the alleged conduct has occurred. There is no discussion or guidance as to whether these *ex post* provisions would be applicable to an SMP operator that had received *ex ante* approval for a permanent price decrease.

Generalizing from the predation example above, CBL was not able to find any reference in any of the Competition Guidelines, as to the *ex post* application of price-related competition provisions in cases where SMP operators are subject to the Pricing Rules. Therefore, CBL considers that URCA should clarify or otherwise provide greater guidance on this matter.

OTHER ISSUES

CBL considers that there are two additional broad pricing-related issues that have the potential to significantly promote sector growth and development which should also be considered in the 2013 Consultation. These were issues that were considered in the 2009 Consultation, for which the responding parties, including CBL, provided comments, but were not addressed in the 2009 Results or the Pricing Rules.

³ Ibid., Section 5.4.3., pages 55-56.

Ambiguity in the Rules as presently drafted

The Approval Process

An SMP operator must obtain URCA's written approval before:

- 8.2 Introducing any changes to non-price terms and conditions for Price Regulated Services that
- could be expected to affect either the effective price paid by consumers or the costs incurred
 - by the SMP operator;

It will be useful to provide some clarity as to how this provision is intended to apply.

Introduction of New Services

43. "An SMP operator that proposes to offer a new service, that is, a service materially different
- to any existing service...", shall file certain information with URCA.

It will be useful to provide some clarity as to how this provision is intended to apply i.e. what does 'a service materially different to any existing service' mean.

BTC Tariff Rebalancing

The rebalancing of BTC tariffs is a long outstanding regulatory issue. In the absence of a clear indication from BTC as to its intentions in this regard, CBL believes that it is incumbent on URCA to take proactive measures to address this issue. CBL considers that URCA should of its own initiative determine the degree to which tariff rebalancing is necessary based on BTC's cost separations results and implement a phased program of increases to BTC's residential (and, if necessary, business) fixed line prices along with offsetting reductions in other service prices (such as domestic and/or international calling prices). In this way, residential customers would have greater certainty as to the extent and timing of any tariff rebalancing approved by URCA. Moreover, the tariff rebalancing program would be consistent with the sector policy objectives of increasing reliance on market forces (i.e., by fostering competition) and improving economic efficiencies (i.e., by promoting cost-orientation in pricing).

Calling Party Pays Pricing

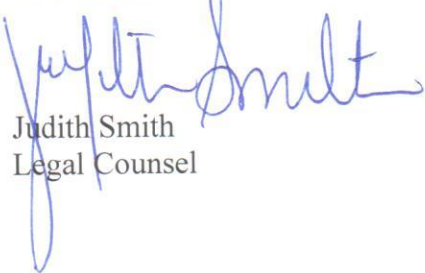
As set out in the 2009 Consultation, the pricing regime (i.e., defined in terms who pays for a call) is currently characterized by a number of anomalies in The Bahamas. At the time, the Privatization Committee suggested that moving towards a single consistent "calling party pays" pricing regime would be more in line with international best practice and also in the interest of the Bahamian public. At the time, CBL supported this proposal. CBL notes that the generally positive effects that have resulted from such a

move in other countries. CBL recommends that URCA consider this issue in a comprehensive manner as part of the 2013 Consultation.

CONCLUSION

CBL trusts that these comments will be of assistance to URCA in framing the scope of the 2013 Consultation and CBL looks forward to participating in that process once it is formally launched.

Respectfully submitted,



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Legal Counsel