



cablebahamas

FRAMEWORK FOR THE CLARIFICATION AND IMPLEMENTATION OF EXISTING UNIVERSAL SERVICE OBLIGATIONS (USO) UNDER SECTION 119 AND SCHEDULE 5 OF THE COMMUNICATIONS ACT, 2009

ECS12/2012

Submitted by

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EXECUTIVE SUMMARY

Cable Bahamas Limited (“**CBL**”) recognizes the importance of the universal service policy to the people of The Bahamas and is committed to working with URCA and the Government to develop a coherent, proportionate and achievable universal service regime.

The “Digital Divide” and convergence are issues that are being addressed by governments around the world. However, we are unaware of the extension of “universal service” to include television services or the imposition of the same universal service obligation (“**USO**”) on two or more providers in the manner that has been enacted or is being proposed. There are errors in the drafting of these transitional USO provisions which calls into question the proper implementation of them as they stand. We propose that a thorough reassessment of what is needed and what is reasonably achievable in The Bahamas should now be undertaken and be reflected as part of the new Electronic Sector Policy (“**ECSP**”) which is due for consultation and publication by end of 2012.

We believe our proposition is reasonable given that the most onerous of the transitional universal service obligations were inserted into the Communications Bill (“**Comms Bill**”) at the eleventh hour and without public consultation or notice to CBL, even though they specifically and directly affected CBL. The haste with which the legislative revisions were incorporated into the text of the Comms Bill is perhaps the reason why there are conflicts between operative transitional provisions - section 119 and Schedule 5.

Any attempt to clarify these provisions ought to be undertaken in the context set by the ECSP. The ECSP makes clear that the purpose of the transitional USO provisions was to maintain continuity with pre-existing commitments and obligations until a fully considered universal service policy could be adopted pursuant to Part VII of the Communications Act (“**Comms Act**”). We do not believe that it is within URCA’s authority to reconcile such material inconsistencies in the governing legislation, particularly where, as here, the result would be the imposition of very onerous obligations, without consultation or notice. To do so, URCA must essentially make new law and this would constitute a usurpation of Parliamentary authority and a breach of natural justice.

We argue that URCA’s proposed “clarifications” are at odds with the main objectives set out in section 5 of the Comms Act, particularly the requirement that market forces should be relied upon as much as



possible as the means of achieving sector policies. They do not appear to be consistent with international best practice. The proposal has competition implication in that it may forestall opportunities for small businesses or entrepreneurs in entering the Communications sector. To this extent URCA should consider whether market forces are, or could be, enabled to achieve the Government's universal service policy.

We raise a number of serious financial, commercial and technical concerns that URCA's proposed "clarifications" do not consider or resolve. In particular:

- There is no indication that URCA has conducted an assessment of the cost or demand implications of its USO proposals;
- URCA has not evaluated the costs and benefits of any alternative funding approaches (for a potential universal service apart from assessing a tax);
- URCA's proposals have overlooked the fact that the tariffs of the Bahamas Telecommunications Company Limited ("**BTC**") remain seriously imbalanced and the impact that this could have by artificially inflating the calculation of BTC's actual USO-related costs;
- URCA has failed to consider or develop a proper set of objectives and guidelines for implementing a universal service funding mechanism;
- URCA's proposed application of the "affordability principle" needs to take a balanced approach to assessing affordability based on a variety of domestic and international considerations, while taking into account the economic costs and market distorting effects of mandating below cost pricing for any designated USO service.
- Despite the lack of any precedent for a "Basic Television Service" USO, the proposal to impose a sweeping and wholly disproportionate transitional obligation on CBL that could likely cannibalize CBL's SuperBasic package in areas where CBL currently offers PayTV; and
- URCA appears to have relied on universal service precedents and benchmarks (particularly from Europe) that simply are not appropriate for or relevant to the culture and geography of The Bahamas, and has failed to consider more appropriate models in use around the world.



This consultation has been helpful as a vehicle for revealing the flaws in the transitional USO provisions. The existing ECSP and Part VII of the Comms Act provide URCA and the Government with the tools they need to work with industry to create a universal service policy that will serve the people of The Bahamas well, without imposing excessive costs on industry participants and, ultimately, consumers. It is ultimately our recommendation that URCA should use its authority under the Comms Act to establish recommendations for a forward-looking, fit-for-purpose universal service policy that will be a model for the region and the world.



INTRODUCTION

CBL including its affiliates Caribbean Crossings Limited and Systems Resource Group Limited, hereby responds to URCA's Consultation Document on "*Framework for the clarification and implementation of existing Universal Service Obligations (USO) under section 119 and Schedule 5 of the Communications Act 2009*" (ECS 12/2012) ("**Consultation Document**"), which was issued on 30 March 2012. The Consultation Document raises fundamental legal, policy and commercial issues which call for careful consideration by URCA and by the Government at this critical juncture in the development of the Bahamian telecommunications and video sectors. CBL looks forward to working with URCA and the Government to establish a forward-looking universal service policy for The Bahamas that is reasonable, achievable and in keeping with the Government's objectives.

CBL's position on key issues and concerns raised by the Consultation Document is summarised in Section A below, followed by CBL's response to the questions posed by URCA in the Consultation Document in Section B.



A. KEY ISSUES

Before turning to the questions raised by the Consultation Document, we address a number of issues that are key to a full and fair assessment of URCA's Universal Service Obligation proposals. As a threshold matter, CBL urges URCA to consider carefully the serious legal and policy issues that are implicated by its proposals to "clarify and implement" the temporary USO provisions set out in Part XIX ("Transitional Provisions") of the Comms Act, in particular section 119 and Schedule 5. We also urge URCA to consider the other points raised in this section, which address fundamental economic, policy, commercial and competition concerns that are raised by URCA's proposals.

CBL believes that the best way forward is for URCA to resist trying to reconstruct the transitional USO provisions of the Comms Act. These provisions were intended to serve as a bridge to a new USO policy that URCA would assist the Minister to develop over time pursuant to Part VII of the Act. Given the passage of nearly three years since these provisions were enacted, URCA should now refocus its efforts on assisting the Government to develop a sound basis for articulating reasonable, proportionate and sustainable universal service obligations as part of the new sector policy going forward. CBL looks forward to working with URCA and actively participating in any process aiming to determine workable solutions to the issues posed.

1. Legal and policy inconsistencies

As the title of this consultation confirms, the "existing USO obligations" set out in section 119 and Schedule 5 of the Comms Act cannot be implemented without clarification. In reality, "clarification" in this context means reconstruction, since the provisions in question contain material inconsistencies, ambiguities and conflicting requirements that cannot be implemented "as is." URCA has identified a number of these flaws in the Consultation Document. However, it has not identified all of them.

It is well known that the transitional USO provisions of section 119 and Schedule 5 were modified in material ways by the legislative drafters at the eleventh hour, prior to final passage of the Comms Act. These changes were made apparently without consultation with industry (or at least, not with CBL). The transitional USO provisions contained in the final version of the Act differ in major respects from the corresponding provisions of the Comms Bill that was tabled and shared with industry for comment in April 2009. In particular, certain clauses of the transitional USO provisions of the Comms Act could be



read to impose sweeping, unprecedented and unachievable obligations on CBL that were not revealed during the consultation on the Comms Bill and are incompatible with the USO provisions of the ECSP at the time and as since revised¹.

Perhaps not coincidentally, these major modifications were introduced following a consultation organised by the Committee for the Privatization of BTC (the “**Committee**”), which closed on 20 April 2009. The responses to that consultation were never made public. This was an astounding lack of transparency, particularly in view of the drastically increased burdens that were being placed on CBL under the Comms Act (in comparison to the provisions of the Comms Bill), with no notice whatsoever. These serious procedural deficiencies should not be overlooked by URCA when considering how best to deal with the legislative drafting problems besetting the transitional USO provisions of the Comms Act.

For the reasons set out below, the transitional USO provisions of the Comms Act relating to CBL cannot be implemented by URCA as drafted. It is beyond the scope of URCA’s authority to attempt to resolve what are irreconcilable internal inconsistencies and anomalies in the text of the transitional USO provisions of the Comms Act, not to mention conflicts between the legislative text and the Government’s published policy. For URCA to do so would place it in the role of legislator and policy maker, *ultra vires* the Act.

1.1 The USO consultation and the Electronic Communications Sector Policy

As stated above, the Committee conducted a public consultation which closed on 20 April 2009. Certain aspects of that consultation, including the proposed scope of the universal service obligations, and the designation of Universal Service Providers (“**USPs**”), were amended in Parliament during the passage of the Comms Bill in May 2009.

Because of the substantial changes made to the Comms Bill, the submission and the results of the consultation were never released. Instead, in recognition of the material conflicting provisions contained in the transitional provisions of the Comms Act relating to USO, the Government, in paragraph 53 of the ECSP, required URCA to draft regulations and have these provisions considered and approved by the Government prior to implementing the USO policy:

¹ Compare para. 53 of ECSP 2009 with para. 54 of ECSP 2011.



URCA needs to establish draft Regulations that implement the Government's USO policy as set out in the Communications Act. URCA shall consult interested parties on its proposed USO Regulations prior to submitting these to the Government for approval and enactment.

Paragraph 55 of the ECSP also mentioned the Government's intention in respect of the implementation of the USO. The Consultation Document, however, fails even to mention paragraphs 53 and 55 of the ECSP.

The ECSP plainly requires URCA to establish the necessary framework for implementing and monitoring the Government's policy on universal service. It is therefore surprising that URCA has failed to develop a record for, or proposing a draft Regulation on, USO. Indeed, the present Consultation Document does not identify the drafting of a Regulation for Government approval as one of the next steps following the consultation.

Given the passage of time that has transpired since these transitional USO provisions were enacted and the ECSP adopted, CBL recommends that URCA conduct a thorough investigation into whether the transitional USO requirements set forth in the Comms Act are reasonable and appropriate given the current economic climate and market developments, and make recommendations to the Minister pursuant to Part VII of the Comms Act. URCA should resist "clarifying" substantive legislative provisions that are inconsistent or conflicting and wholly disproportionate as URCA proposes to interpret them.

1.2 Conflicting provisions

The provisions of section 119 and Schedule 5, as they relate to CBL, are incompatible with the ECSP.

The transitional USO provisions were intended to provide continuity to Bahamians during the process of implementing the new regulatory framework under the Comms Act:

The implementation of the USO policy must ensure that no person in The Bahamas who today benefits from electronic communications services provided under the current USO and similar arrangements is left without service and that the services offered are no less than is currently provided. ECSP, paragraph 54.

The services included in the USO prior to commencement of the Comms Act were inter alia basic fixed voice, provision of public payphones, free access to emergency numbers and access to dial-up internet -



all services provided by BTC. Continuity would dictate that these services and provider remain the same under the transitional provisions. However, the transitional USO provisions introduced new universal services, most notably basic television, and a new universal service provider in the form of CBL for basic television and Internet. As already noted and discussed more fully below, the final version of the transitional USO provisions of the Comms Act materially modified the corresponding provisions of the Comms Bill. The Comms Bill which, with respect to Basic Television Services, had largely codified the commitments made by CBL in a Memorandum of Understanding (“**MOU**”) entered into between CBL and BTC at the Government’s request in 2008.

Part VII Comms Act (Part VII) contains the principal framework for establishing and implementing a forward-looking universal service policy. These same provisions vest the Minister with the power to modify the universal service policy, including by specifying that “services shall no longer constitute the subject of a universal service obligation” after “taking into account the economical and technical feasibility of such obligations” (Comms Act, section 41(2) & (3)).

We contend that the Consultation document goes well beyond an extension of the *status quo ante*. *It appears to be requiring CBL to expend large sums on the provision on an extended and new application of CBL’s previous commitments.* This would be required without any consideration of the capital or operating expenditures or resource burdens that would be placed on CBL. These costs would quite likely exceed the ability of industry *and* Government to finance them, particularly in the current global economic circumstances.

Moreover, the additional build-out and service provision would take several years to complete and extend well beyond any reasonable transition period or the three-year period covered by the existing ECSP. It is submitting that URCA’s proposed interpretation of section 119 and Schedule 5 appears incompatible with the Government’s policy.

1.3 Modifications to the Comms Bill

In considering the appropriate scope of the transitional USO obligations under the Comms Act, the legislative history of section 119 and Schedule 5 is revealing. As discussed above, the transitional USO provisions applicable to CBL were modified substantially at the eleventh hour, without public consultation or notice to CBL.



- (a) The transitional provisions of the Comms Bill would have required CBL to continue to provide the Basic Television Services it had voluntarily agreed to offer prior to the adoption of the new regulatory framework, pursuant to the MOU². The Comms Bill's transitional USO obligation covered "*basic television services in specified locations*", i.e., a six channel service to 16 designated islands.³ There was no requirement for CBL to serve the entire population of The Bahamas and no "affordability" obligation.
- (b) The Comms Bill did not propose a USO obligation of internet on CBL. In the Comms Act, CBL's obligation is required to provide "*basic internet services to all populated areas and specified institutions*", i.e., *the provision of internet connections capable of 56 kbps free of charge to nine specified institutions or types of institutions* (public schools, libraries, etc.).⁴ There was no requirement for CBL to serve the entire population of The Bahamas and no "affordability" obligation.

CBL's transitional USO obligations as enacted into law are inherently flawed as a matter of legislative drafting and construction. It is our submission that URCA cannot rectify the conflicting provisions of the Comms Act by administratively amending Parliament's Act. Section 119 does not accord with schedule 5. It is our submission that the most URCA can do to give effect to Parliament's intention is to interpret the provisions in accordance with paragraph 54 of the ECSP which means giving effect to the statement '*current USO and similar arrangements*'.

The crux of the statutory construction problem is that the provisions ultimately adopted by the Parliament and contained in section 119 conflicts in material ways with those set out in Schedule 5, even though the two sections are meant to be read together. The conflicting provisions relating to CBL are material and result in an incoherent set of obligations. This is of particular concern in a legislative provision that does not apply generally but, specifically.

² With regard to basic television services, CBL's commitments under the Comms Bill were the same as those set out in the MOU between CBL and BTC, dated 17 June 2008. In the MOU there were 13 islands specified.

³ Comms Bill, section 119(1)(e) & Schedule 5, sec. 2(d). The specified islands included: Sweetings Cay and Water Cay; East End, Grand Bahama; Grand Cay; Guana Cay, Abaco; Moores Island; Central and South Andros including Mangrove Cay; South Eleuthera, Current and Current Island; West and East Exuma and Cays; Cat Island; Rum Cay; North and South Long Island; Ragged Island; Crooked Island; Acklins Island; Long Cay; and Mayaguana.

⁴ Comms Bill, section 119(2)(c) & Schedule 5, sec. 2.



i. Basic Television Services

Section 119 includes an “affordability” principle in respect of Basic Television Services but schedule 5 does not require CBL to provide “*affordable basic television services*” but, rather, “basic television services” to all populated areas and to specified institutions. Yet it is schedule 5 that makes the transitional USO obligations applicable specifically to CBL, whereas section 119 merely sets out the list of potential services that a licensee, to be specified in schedule 5, *may be* required to offer as a transitional measure, *subject to a determination of USOs to be made by the Minister under Part VII of the Comms Act*.⁵ Thus, under general rules of statutory interpretation, schedule 5 would be subjugated to section 119; in this particular case the opposite is true because it is schedule 5 that imposes the specific obligation on CBL.

In interpreting these provisions, a court would also be expected to apply one of the most basic rules of statutory construction, namely:

*Where the application of one of the opposing constructions of an enactment would produce an adverse result (that is one detrimental to the subject or the state), that is a factor against that construction, and indicates that the court should curtail the application of the enactment, narrowing its operation and effect, a process known as strict construction.*⁶

Halsbury’s Laws of England, Statutes and Legislative Process (Volume 96 (2012) 5th Edition), Interpretative Criteria and the Basic Rule/1088.

Thus, under the circumstances, only the narrowest interpretation of the obligation may reasonably be applied to CBL as a transitional measure. As a consequence, the condition of “affordability” – however that term may reasonably be defined – should not be applicable to CBL’s provision of Basic Television Services under the transitional USO provisions.

⁵ The only requirement of section 119 is that CBL must be designated as a universal service provider for at least one of the listed services as a transitional matter.

⁶ Furthermore, s. 44(4) of the Comms Act effectively grants URCA the authority to tax (see section 1.5) and statutes imposing tax obligations are construed narrowly and any ambiguities are resolved in favour of the subject i.e. CBL (Regina v. Central Valuation Officer and another (Respondent) ex parte Edison First Power Limited (Appellants) [2003] UKHL 20).



ii. Internet

Similarly, there is an important discrepancy between the provisions of section 119 and Schedule 5 in relation to CBL's Internet obligations. Section 119(b) & (c) define the obligation as "*affordable* basic *dial-up* services to all populated areas" and "basic *dial-up* internet services to specified institutions." By contrast, Schedule 5, section (1)(b)(ii)&(iv), defines the obligation as "*internet services* to all populated areas" and "*internet services* free of charge to specified institutions. For the same reasons discussed above in connection with Basic Television Services, the provision of basic dial-up internet services to populated areas would not be subject to an "affordability" requirement. However, in this case, it could be inferred that section 119 would govern the interpretation of the type of "internet" obligation ostensibly imposed on CBL by Schedule 5 to resolve any ambiguity. That is, the type of internet service in question would be dial-up, as set out in section 119. Since CBL is not equipped to provide dial-up internet services and it is a service for which there is likely to be little demand, it is difficult to see how this obligation can be applied to CBL in any meaningful way.

1.4 More effective options

Universal service policy is the responsibility of Government, and URCA's role is in its implementation and administration. URCA is aware that the USO in respect of television is unprecedented in the world. It is also unprecedented to require duality of universal service providers for Internet for potentially the same geographic area.

We submit that rather than seek to clarify and implement the transitional provisions URCA consider other options :

Option 1 - On the basis that the Government has already set out its USO in the transitional provisions of the Comms Act, the ECSP (paragraph 53) requires URCA to draft Regulations – presumably applying a cost-benefit analysis reflecting the present market conditions – for consideration and approval by the Government prior to implementation. There is no indication in the consultation document that the end result is to produce regulations and to that end we are concerned that the process breaches the policy requirements .

Option 2 - URCA is aware that many aspects of the transitional provisions are unprecedented (such as USO for basic television or dual Internet USPs). Section 42(2) of the Comms Act gives URCA the



power to “determine that a licensee or licensees are required to meet all or some of the universal service obligations” and section 42(5) gives URCA the power to relieve designated licensees of any obligations. URCA is required to follow good regulatory practices, including providing a clear rationale for the decisions it makes and taking into account international practices. URCA has chosen instead to apply the most expansive interpretation of the transitional provisions, without any regard for the efficiency, equity and precedence for the obligations imposed on CBL.

Option 3 - A further option available to URCA is to brief the Minister on the anomalies and legal inconsistencies in the Comms Act. Such an advisory role is available to URCA under the Comms Act as a general principle in its roles as an independent regulator.

Option 4 - URCA is aware that a new sector policy needs to be enacted in 2012, URCA could use this consultation or time to engage the market and seek clarification and legal changes. This would allow for analysis of a properly defined, analysed and costed universal service policy in the new sector policy.

Option 5 - Although URCA has indicated that it will be consulting simultaneously with USPs privately, we contend this should have occurred prior to the publication of the consultation. The advantage would likely have been to present a more focused and reasonable document for discussion.

URCA elected instead to administratively amend the legislation and this approach is fraught with irregularities.

Recommendations

URCA has a golden opportunity to assist the Government in developing a new, more rational sector policy on USO. The new policy should take into account significant regulatory developments such as the policy for awarding new spectrum⁷ and the Statement of Results on the review of Public Sector Broadcasting.⁸

⁷ Policy for New Spectrum Bands – 700 MHz, 11 GHz, 12 GHz and 42 GHz – ECS 09/2012.

⁸ Statement of Results – Review of Public Service Broadcasting Consultation Document – ECS 13/2011.



Given that nearly three years have passed since enactment of the Comms Act, and considering the imminent development of a new ECSP, URCA should undertake a root and branch assessment of the objectives that can reasonably be achieved by the Government’s universal service policy over the next three years. A reasonable starting point, for example, could take into account the principles applied by the EU Universal Service Directive, which considers that a service should be considered part of the universal service obligation if it satisfies two tests:

- (1) In the light of social, economic and technological developments, has the ability to use the service to become essential for social inclusion; and
- (2) Are normal commercial forces unable to make the service available for all to use?⁹

CBL is committed to engaging with URCA to answer these basic assessments for The Bahamas, and we believe that URCA’s findings will provide valuable input to the Minister and the Government.

2. Statutory obligation to consider market forces

Section 5 of the Comms Act (“section 5”) states that *“All policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic communications policy objectives and shall comply with the following guidelines”* which include, among others, that:

- a) *market forces shall be relied upon as much as possible as the means of achieving the electronic communications policy objectives;*
- b) *regulatory and other measures shall be introduced –*
 - (i) *where in the view of URCA market forces are unlikely to achieve electronic communications policy objectives within a reasonable timeframe; and*
 - (ii) *having due regard to the cost implications of those regulatory and other measures of affected parties;*

⁹ See Annex V, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002, on Universal Service (“**Universal Service Directive**”)



- c) *regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory; and*
- d) *regulatory and other measures that introduce or amend a significant government policy or regulatory measure (including, but not limited to, the sector policy) –*
 - i) *shall specify the electronic communications policy objective that is advanced by the policy or measure; and*
 - ii) *shall demonstrate compliance with the guidelines set out in paragraphs (a), (b) and (c).*

These guidelines for regulation and Government measures require that a regulatory agency, as a first step, consider and assess whether market forces may be sufficient currently or within a reasonable period of time to achieve the specific electronic communications sector policy objective under consideration – in the case at hand, universal service related policy objectives.

For instance, Article 1 of the Universal Service Directive issued by the European Commission requires Member States to first consider whether the market is adequately providing the designated services before a universal service obligation is imposed:

The aim is to ensure the availability throughout the Community of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market.¹⁰

In effect, a number of EU Member States have made determinations that certain designated services are being or will be provided by the market and, hence, have been withdrawn from the USO. For example, based on a recent comprehensive assessment of the implementation of USO in the EU,¹¹ Austria, the Netherlands, Denmark, Sweden, Germany and the Czech Republic do not include the provision of public payphones as part of the USO. In the Caribbean examples of island-states that do not include pay phones as part of the USO are the countries making up ECTEL, Trinidad & Tobago, the Cayman Islands and the British Virgin Islands. The provision of a telephone directory inquiry service and/or the provision

¹⁰ Universal Service Directive, Article 1, paragraph 1

¹¹ Body of European Regulators for Electronic Communications (BEREC) Report on Universal Service – reflections for the future, June 2010 (BoR (10) 35).



of a printed telephone directory is no longer part of the USO in Ireland, Norway, Italy, Sweden, Germany, the Czech Republic and Denmark. Access and telephony services at a fixed location are not included in the USO in Sweden and Germany.

The transitional provisions set out in the Comms Act include a number of “interim” universal service obligations. However, in section 3 of the Consultation Document (page 6) URCA refers to these “interim” USOs as “existing” USOs. Later in the same section of the Consultation Document, URCA goes on to state that:

- BTC will "retain" its designation as the USP for the provision of Basic Telephony Services (page 9)
- CBL will "retain" its designation as the USP to provide Internet Services to all populated areas and free of charge to specified institutions (page 11)
- BTC will "retain" its designation as the USP to provide Basic Dial-up Internet Services, to all populated areas and free of charge to specified institutions (page 11)
- BTC will "retain" its designation as the USP to provide Public Access to Pay Apparatus (page 11)
- CBL will "retain" its designation as the USP for Basic Television Services (page 15)

There is no evidence in the Consultation Document that URCA undertook an assessment whether market forces are currently meeting or can be expected in a reasonable period of time to meet the objectives for which the interim USO’s were established as required under section 5.

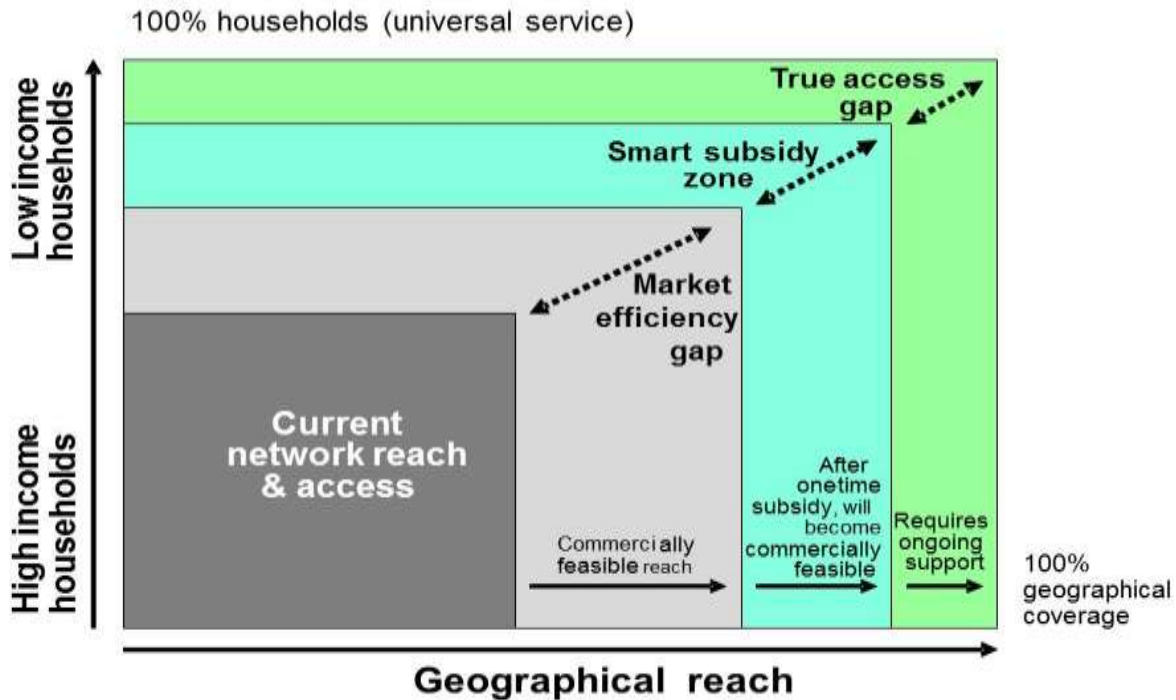
The theoretical framework for universal services (and universal access) recognises the need for a root and branch analysis and market assessment being advocated by CBL (as shown in the figure below). It requires:

- Step 1: An initial assessment of the current network reach and access – neither the Government nor URCA took this first step
- Step 2: Assessment of what the market could deliver (market efficiency gap) through privatisation, liberalisation, roll-out targets when licensing new spectrum etc.
- Step 3: Which customers and geographic areas could be reached through targeted subsidies by Government (smart subsidy zone)



- Step 4: The remaining gap is then the true access gap.

The theoretical framework has been covered in the Telecommunications Regulation Handbook (Infodev) and shows that there needs to be a robust and logical approach to the design of a universal service policy:



Source: Initial concept in "Telecommunications & Information services for the Poor: Towards a Strategy for Universal Access"; by J. Navas-Sabater, A. Dymond, N. Juntunen, 2002. Modified by Intelcom

From a coordination perspective, CBL has grave doubts about the feasibility and practicality of designating two Internet service USPs within all populated areas of the country. Such an overlap in geographic scope is likely to result in a costly duplication of facilities. URCA failed to provide the rationale for or explain how the duplicate Internet service USO requirement would be implemented and administered in an efficient manner.

CBL would be pleased to work with the Government, URCA, BTC and other industry players to evaluate whether there is a legitimate need to include Internet services within the definition of "universal service" in the light of actual and expected market developments.



3. Cost implications

CBL is of the view that the design of any universal service regime should be efficient and proportionate to its purpose, and the cost implications of the regime should be properly taken into account, as required under section 5 the Comms Act.

Best practice in this respect identifies the key objectives to be achieved by any universal service regime. For instance, the universal service regime in the EU “*was designed to accompany liberalisation, with the objective of safeguarding existing reasonable access at an affordable price. In effect, a safety-net for those whose financial resources or geographical location do not allow them to have the basic electronic communications services that are already available to, and used by the great majority of consumers*”.¹²

A similar approach has been adopted in Canada and in a number of other industrialized countries. In effect, a key objective in these countries that had already achieved a significant level of network rollout, was ensuring that existing service in rural and remote high-cost serving areas was not jeopardized by liberalization. Such “service maintenance” programs were generally administered via the designation of a specific USP to provide the USO. In this context, the USO was primarily or exclusively related to the maintenance of existing service in designated uneconomic areas and/or uneconomic customers.

In effect, this appears to be the primary objective set out in the ECSP, pursuant to paragraph 54, which states that:

The implementation of the USO policy must ensure that no person in the Bahamas who today benefits from electronic communications services provided under currently USO and similar arrangements is left without service and that the services offered are no less than what is currently provided.

In contrast, in many developing countries, where a significant level of network rollout had not been achieved before liberalisation, the universal service regimes are focussed on network expansion to

¹² Petri Koistinen, Policy Development, DG Information Society and Media, Public Workshop organised in the context of the public consultation on universal service principles in e-communications, 30 March 2010, Charlemagne Building, rue le la Loi 170, Brussels.
http://ec.europa.eu/information_society/policy/ecomms/doc/library/public_consult/universal_service2010/presentations/s0100cover_and_koistinen.pdf Directive



unserved and/or underserved geographic areas.

Such “network expansion” programs are generally administered on a project-by-project basis whereby the USP was selected based on a voluntary competitive auction process. In this context, the idea of making service deployment funding available through a least-cost competitive tender was primarily or exclusively related to the expansion of networks to designated geographic areas in countries such as Chile, Peru, the Dominican Republic and Colombia, to name a few in the Latin American and Caribbean region.

The USO proposals set out by URCA in the Consultation Document appear to include a combination of both potential “service maintenance” and “network expansion” programs – i.e., in the first case, by potentially requiring the provision of certain services at designated “affordable” prices that are below cost and, in the second case, by potentially requiring the expanded provision of certain services to all currently unserved “populated areas”. Further, unlike any other country in the world, URCA is proposing to implement these combined programs for basic telephony services, Internet (both dial-up and broadband) and television.

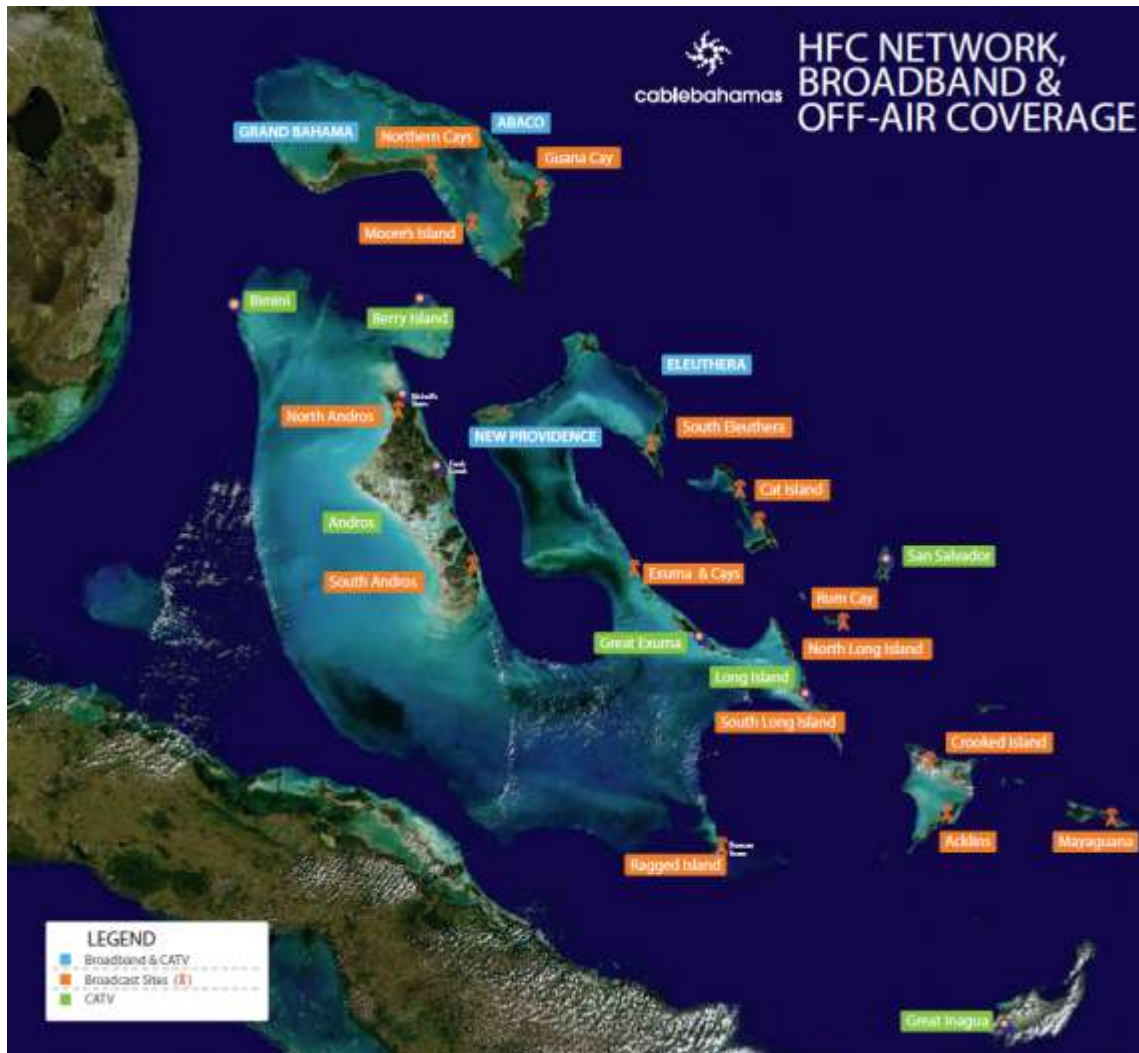
There is no evidence in the Consultation Document that URCA has conducted an assessment of the implications or desirability of network expansion into currently unserved/underserved populated areas – either in terms of cost, technical feasibility, the continued relevance of some of the services in question, economic efficiency and the potential for unnecessary and uneconomic duplication of facilities.

This is evident from URCA's proposal to designate CBL as a USP with respect to the provision of Internet service. CBL currently provides broadband Internet services using its Hybrid-Fibre Coaxial (“HFC”) network. As Figure 1 overleaf shows, CBL's HFC network facilities which allow for the provision of broadband and cable television (“CATV”) services are currently in place on the islands of New Providence, Grand Bahamas, Abaco and Eleuthera. CBL also has unidirectional CATV facilities on a number of other islands, including Andros, Bimini, Berry Island, Great Exuma, Great Inagua and Long Island; but these CATV facilities do not allow for the provision of Internet services. Expanding CBL's Internet coverage to all populated areas of The Bahamas would, therefore, involve upgrading and expanding existing CATV facilities on this latter group of islands. In addition, it would involve building out HFC facilities to numerous other remote and sparsely populated islands, as well as linking all of the islands together. Setting aside technical and practical considerations, such a requirement would involve



enormous cost and take years to complete. Mandating such a requirement would clearly be contrary to section 5 of the Comms Act.

Figure 1 – CBL's HFC & CATV Cable Network and Off-Air Coverage



It should also be noted in this respect when the Committee conducted its USO Consultation in 2009, it specifically rejected the notion of designating CBL as USP for Internet service precisely because of the considerable cost and wasteful duplication of facilities involved. The Committee specifically stated that: "CBL would have to make considerable infrastructure investment in remote parts of The Bahamas to



fulfil the USO using its own infrastructure."¹³ The magnitude of this investment is clear from Figure 1. Further, the Committee recognised that such investment would be wasteful in view of the fact that BTC already has the infrastructure required to provide basic Internet service to remote areas of The Bahamas.¹⁴

An additional consideration is that wireless technology would be far more efficient and practical for meeting most if not all of URCA's proposed USO measures than any form of wireline facilities in low population density areas where expansion to any currently unserved areas may be required.

URCA should explore the potential of shared access. There for the access is not defined in terms of individual households. This would avoid potential distortion in the Bahamian electronic communications sector and achieve a more cost effective solution for uneconomic areas. URCA's proposal lists specified institutions that should be provided with certain services free of charge and one such institution is a community center. The proposed definition of community center would mean that residents would have access to certain services and the solution would be seem more reasonable and proportionate.

CBL submits that the implementation of URCA's USO proposals would not be "efficient and proportionate". Specifically, the implementation of both the service maintenance and network expansion approaches would run the risk of severely burdening the electronic communications sector of The Bahamas. The proposed approach would also result in disproportionate and unsustainable costs relative to other sectors of the Bahamian economy, and as compared to other countries with which The Bahamas competes in the global economy. Moreover, as noted in the previous sections, the Government's transitional USO policy was designed to include interim measures, and these measures were completely unprecedented and wholly unrealistic.

It is in this context that CBL respectfully submits that the Minister should review and consider issuing a revised and more rational USO policy pursuant to section 41 of the Comms Act.

¹³ The Committee, Universal Service Obligations for the Communications Sector, 19 March 2009, paragraph 16

¹⁴ Ibid. See also CBL's response to Q.6 below.



4. Government Funding Option

Should the need for a USF(s) be established, CBL notes that the Consultation Document does not review or consider alternative financing mechanisms for the USF other than a single approach involving the imposition of a USO charge(s) on licensees and content providers. The use of market-based approaches is included as something of an afterthought towards the end of the document and the views sought by one of the last consultation questions posed (number 40 out of 43).

In contrast, several different approaches are contemplated under section 44(1) of the Comms Act:

- (1) *URCA may establish by determination or regulation a universal service fund or universal service funds, into which the following money shall be paid –*
 - (a) *any money appropriated by URCA for the purpose;*
 - (b) *any grant, contributions or loans from any international financial organizations or donors; and*
 - (c) *all money contributed by the Government for this purpose.*
- [...]
- (4) *URCA may levy charges on licensees or content providers to contribute to one or more universal service funds.*

Consistent with section 5 of the Comms Act, URCA needs to make an assessment of the “costs and implications” of levying of sector contributions for the financing of the USF and compare this to the relative costs and benefits of the alternative approaches, including consideration of Government funding approaches. CBL notes that it found no evidence in the Consultation Document that URCA considered or analysed the cost and implications of alternative USF funding mechanisms.

5. USO, tariff rebalancing and access deficits

CBL is seriously concerned with the complete absence of any discussion in the Consultation Document of



the need to rebalance BTC's tariffs for fixed telephony services prior to considering the need for any form of subsidy mechanism for its basic telephony service. Without a full tariff rebalancing process, there is a significant risk that an ongoing and disproportionate financial burden could be placed on the sector that would create inefficiencies, distort market competition and have other negative consequences. In CBL's view, any attempt to create a USF without first resolving the serious and ongoing competitive distortion created by BTC's unbalanced tariff structure, would be a serious omission by URCA.

In July 2009, the Committee issued a Retail Pricing Consultation Document dealing with a series of pricing issues, including tariff rebalancing and noted the following:

(21) Tariff rebalancing refers to the steps taken by an operator to increase some tariffs (i.e. prices) and decrease others such that they better reflect the underlying cost of provision. It is a policy with strong international precedent. The problem, in simple terms, is that there is a tendency for certain services – typically local calls and access (line rental) services – to be under-priced and other services – typically international calls – to be over-priced.

[...]

(24) Notably in 2005 the PUC approved BTC's application to increase the monthly access charge for a telephone line from \$9.50 to \$15.00 for residential and from \$21.25 to \$36.00 for business customers.

(25) In the absence of updated costing information from BTC, it is difficult to assess whether the increases in the monthly access charges have partially or fully compensated BTC for its access deficit and whether further rebalancing is required.

In March 2009, the Committee issued a USO Consultation Document, which included a separate chapter on the issue of the access deficit, and noted the following:

(82) Access Deficit is not the same issue as universal service but is included in this consultation because it is a related issue. This is because an access deficit often arises for social policy reasons similar to the USO.

[...]



(85) *The access deficit should not be confused with the USO. The USO is used to deal with the challenge of unprofitable customers which are supported in the non-liberalised environment by cross-subsidisation between the profitable and unprofitable customers and in the liberalised environment through access to a USF. As previously outlined, the access deficit deals with unprofitable products and services (such as residential connection charges) which are supported in the non-liberalised environment by cross-subsidization between the different products.*

(86) *If an access deficit can be demonstrated by the operator to URCA's satisfaction then there are three main options for funding it in a liberalised environment:*

Option 1: *Maintain the status quo - the incumbent operator is expected to cover the access deficit through cross subsidisation from more profitable products and services such as international long distance calls and cellular mobile calls.*

Option 2: *Compensation Scheme - URCA would ensure that the incumbent operator was compensated fairly for the size of the access deficit, this may be through changes to interconnection charges.*

Option 3: *Tariff rebalancing - an access deficit occurs where tariffs for access services are below cost. In a competitive market, the Government would expect to see tariffs move to reflect the underlying costs of the services provided so that efficient competition is encouraged and consumer benefit maximised.*

[...]

(88) ***The Government believes that Option 3 is the most appropriate policy response to the issue of access deficits. (emphasis added)***

In September 2009, URCA issued its Statement of Results on the Retail Pricing Consultation. With respect to the question "is there a need for further tariff rebalancing in The Bahamas?" URCA concluded the following:

Proposed Further Action/Comments

(7) *There is broad support from the respondents for tariff rebalancing. The main obstacle is a lack of costing data for BTC's services, as noted by SRG. URCA believes that the process for*



determining the need for tariff rebalancing should be as follows: URCA would first obtain costing information from BTC to determine if an Access Deficit exists; Based on this information URCA would assess the degree of tariff rebalancing necessary, if any; URCA would consider the need to conduct a public consultation on proposed rebalancing, in conjunction with town hall meetings.

[...]

(9) SRG also mentioned that the consultation was silent on who calculates the cost, how costs are verified and the timeframe for the process. URCA intends to issue guidelines on Accounting Separation and Cost Accounting in the near future, which will address these concerns.

(10) Following the process set out above, BTC will be able to submit a tariff rebalancing proposal to URCA as long as its submission is supported by the necessary costing information and prepared in accordance with URCA's guidelines on Accounting Separation and Cost Accounting. URCA will then review the need for tariff rebalancing.

CBL notes that the current Consultation Document does not mention or address the issue of rebalancing or access deficits. Absent a rebalancing process, CBL is seriously concerned that BTC could potentially claim compensation for its basic telephony service USO where any such compensation would otherwise be unnecessary or, if necessary, the level of compensation would be overstated.

In 2009, URCA had set out a process that was based on the guidelines for accounting separation and cost accounting that would allow URCA to obtain costing information from BTC to determine if an access deficit exists. CBL understands that BTC has submitted two years of accounting separation results to date. CBL believes that this information should provide a reasonable basis for URCA to determine whether an access deficit exists.

We therefore contend that the Consultation Document has not set out URCA's proposal to differentiate between an access deficit that results from unbalanced tariffs from any funding requirement resulting from a USO. In July 2009, the Committee recognized such a distinction when they stated that "The access deficit should not be confused with the USO".

Accordingly, CBL is strongly opposed to any USO financing mechanism that would contribute to any claimed access deficit by BTC that results from unbalanced tariffs. CBL urges URCA and the Government



to apply and implement the stated preferred policy option that tariff rebalancing is the most appropriate policy response to the issue of access deficits.

6. Guiding principles for the USO Scheme

In implementing a USO policy for The Bahamas, URCA is bound by the provisions of the Comms Act which sets out guidelines for regulatory and Government measures. In addition, CBL suggests that URCA should adopt clear policies and objectives for any USO funding mechanisms it may find necessary to implement.

In CBL's view, any established USO programme and related funding mechanism(s) should include:

- I. A full and proper assessment of each service considered for inclusion in the USO in light of:
 - social, economic and technological developments, and whether the ability to use the service is or will be essential for social inclusion, and
 - whether market forces are unable to make the service available for all to use.
- II. An assessment of the technical and economic feasibility of fulfilling the obligations.
- III. Consideration of the use of all available market and other financing mechanisms to support any established USO(s).
- IV. Measures to keep to the absolute minimum funding level necessary to support an identified, eligible USO funding requirement;
- V. A regular review with the objective of reducing or eliminating any ongoing funding requirement over time;
- VI. Measures to ensure the program and funds are administered in a transparent, non-discriminatory and competitively neutral manner; and
- VII. Measures to ensure the program and funding measures are designed to keep the associated regulatory burden on all parties to a minimum.

Moreover, all of the factors used should be supported by international regulatory precedents.

Minimizing any potential USO funding requirements can be accomplished by ensuring that the prices for USO services are to the greatest degree possible cost oriented, while taking into account any potential affordability related concerns. However, it is important to recognise that artificially maintaining below-



cost prices has the effect of creating substantial economic inefficiencies while also distorting market forces and competition.

Moreover, URCA's seemingly contemplated combined allocation of sectoral and national resources devoted to uneconomic areas, uneconomic customers as well as unserved areas would result in a significant burden that must be financed from licensees' customers in economic areas and (if the USF is financed by sector contributions) or from the economy as a whole (if the USF is financed by the national budget). Imposing such a combined current and future burden will result in a less productive electronic communications sector that will be less able to contribute to the general economic growth and productivity of the nation.

7. Assessing "affordability" in the context of a USO

At the outset, we note that the one of the material conflicts amongst the statutory provisions applicable to the transitional USOs relates to the "affordability" requirement and its application to the universal services designated for provision by CBL. The transitional USO provisions in the Comms Act (sections 41, 119 and Schedule 5) relating to Basic Television Services are unclear and inconsistent. In CBL's view, an "affordability" requirement cannot reasonably be applied to CBL's Basic Television Service under the transitional USO provisions.

However, this requirement would need to be interpreted in conjunction with a fundamental principle of modern regulatory practice and constituent with URCA's Retail Price Regulation Rules: that the price for CBL's Basic Television Services must be cost-based.

At page 8 of the Consultation Document, URCA provides a list of suggested criteria that it may use to assess the "affordability" of Basic Telephony Services. It proposes to apply the same criteria in the case of dial-up Internet service (page 10) and Basic Television Services (pages 14-15). In each case, URCA states:

The following list sets out examples of the factors URCA may consider (without limitation) in assessing the affordability of a service:

- *Subscription levels;*
- *Size of local calling area;*
- *Household income;*



- *Cost of living;*
- *Expenditure on service as a percentage of household income in different groups.*

CBL notes that URCA's suggested "affordability" criteria included in the Consultation Document seem to have been drawn in part from a Federal Communications Commission's Universal Service Report and Order ("**FCC Report and Order**") released in 1997. However, the FCC Report and Order pertains to basic telephony services, which explains the criterion relating to the size of the local calling area. The FCC Report and Order did not consider any matters relating to cable television service.

In CBL's view, any assessment of the affordability of a service's price must be undertaken with an understanding of the cost of the service. Any mandated requirement to price a service below cost – as in the case of a USO service – should be kept to an absolute minimum and as narrowly targeted as possible in order to minimize inefficiencies and market distortions.

As to URCA's suggested affordability criteria, CBL agrees that factors such as subscription levels, household income (including GDP per capita) and the cost of living (general price inflation) are relevant considerations. However, these are all dynamic factors that must be evaluated over time rather than at a single point in time.

Subscription levels can vary over time for a variety of reasons, including changes in the economy, consumer preferences and substitution effects. In the latter case, for instance, mobile services are increasingly substitutes for fixed services. Broadband services (fixed and mobile) are in effect substitutes for dial-up Internet access. Consequently, fixed line telephony and dial-up Internet subscription levels have been flat or declining worldwide for many years. Similar factors affect cable television subscription levels, including the increasing availability of competitive alternatives such as satellite TV, online video services (e.g., Netflix) and IPTV services.

In this same respect, it is also important to take into account service penetration rates. As in the case of subscription levels, changes in the penetration rates should be considered and the reason for changes over time evaluated. For instance, while the penetration rate of fixed telephony services may be declining, mobile penetration rates have been rising rapidly. Also, assessing the reasonableness of penetration rates cannot be done in isolation however. Comparisons with other similarly situated countries are necessary – i.e., in the case of The Bahamas, other Caribbean jurisdictions.



Changes in household income, GDP per capita and general price levels from year to year should also be taken into account when assessing affordability. As average income levels rise, services with prices that grow at a rate less than the average increase in income levels become more affordable. Similarly, services with prices that increase less than the general rate of inflation are declining in “real” terms over time. Thus, when average income levels and the general rate of inflation are rising, there is no rationale for freezing USO service prices at levels that have been in place for years – especially when they are priced below cost.

Consideration of the percentage of an average household budget or per capita GDP a specific service accounts for is also relevant factor when assessing affordability. However, these measures should ideally be judged through comparisons with other similar jurisdictions – i.e., in the case of The Bahamas, with other Caribbean jurisdictions. Services such as basic telephony services typically account for a relatively small percentage of an average household’s income. Determining the percentage above which affordability concerns might arise is ultimately subjective. Comparisons with other Caribbean jurisdictions, taking environment differences into account as necessary, can be used to help gauge the relative affordability of prices in The Bahamas¹⁵.

Lastly, CBL notes that in the list of suggested criteria, URCA has included consideration of spending on the service in question as a percentage of “household income in different groups”. While CBL agrees that this criterion is relevant when applied at a reasonably broad level, it can lead to highly distortional results if applied narrowly. For instance, if such a test is applied to a very narrowly defined low-income group, representing a very small percentage of the population, very few products or services would be found to be affordable. Establishing an “affordable” price threshold on such a narrowly defined basis would be misguided since it would have the effect of potentially capping the price of the service in question far below the cost of the service in question, despite the fact that a considerably higher or even cost-based price would be affordable to the vast majority of the population. Setting prices on such a narrowly defined criterion could lead to significant economic inefficiencies, undermine investment incentives and distort market forces.

¹⁵ for example in Trinidad & Tobago where there is a USO to provide affordable and easily accessible domestic and international call origination and termination for fixed line as well as mobile cellular., the penetration trend shows that there are 84%¹⁵ more mobile subscribers than fixed line subscribers. Similarly in The Bahamas the penetration trend shows that there are 70%¹⁵ more mobile subscribers than fixed line subscribers.



A finding that a service may be unaffordable for a small subset of low-income consumers or households does imply that the market price for the service should be set below cost to accommodate such a group, but rather than targeted income support or subsidized pricing measures may be necessary. Such an approach would minimize inefficiencies and market distortions.

Overall, a balanced approach to assessing affordability based on a variety of domestic and international considerations should be adopted by URCA, while also taking into account the costs and impact on the electronic communications sector in The Bahamas and the economy as a whole, of mandating below cost pricing for any designated USO service.

8. Unprecedented application of a USO to Basic Television Services

There is no international precedent for the inclusion of television or television-like services in a USO. Typically, provision of national television services is achieved through a public service broadcasting policy rather than through universal service obligations. A USO for Basic Television Services is unprecedented and the requirement to satisfy the need for Bahamian content (ZNS and the Parliamentary Channel) should be the responsibility of the Broadcasting Corporation of The Bahamas (“BCB”) and should not be included in the USO¹⁶. In St. Vincent and the Grenadines, which has a similar topology to The Bahamas, the quasi-Government entity, Broadcasting Corporation, operates one television station and five repeater stations that provide near total coverage in that multi island state. The saturation levels there are approaching the 95% mark. The project is partially Government funded.

As interpreted by URCA’s Consultation Document, the USO provisions for Basic Television Services set forth in the Comms Act are internally inconsistent and are entirely disproportionate and incompatible with the Sector Policy.

CBL notes that in the Comms Bill (section 119(1)(e)), the obligation was limited to “basic television services in specified locations” only (and without any reference to “affordable”). The obligation was co-extensive with CBL’s commitment under the MOU. Like the Comms Act, the Comms Bill specified a six channel universal service including ZNS Channel 13 and the Parliamentary Channel to 16 specified locations under Schedule 5, section 2(d).

¹⁶ Statement of Results - Review of Public Service Broadcasting Consultation Document - ECS 13/2011



In comparison, the Comms Act, expanded the Basic Television Services obligation to cover “basic television services **to all populated areas and specified institutions**” (as listed in Schedule 5). However, Schedule 5 of the Comms Act is inconsistent with section 119 insofar as the latter specifies that CBL must provide “affordable” basic television services. As discussed in Section A.1.2 and A.1.3, the conflict between the transitional provisions cannot be resolved by URCA and, in any event, would need to be interpreted by reference to the specific application of the obligation to CBL (i.e., *not including* the affordability as a requirement).

Despite these ambiguities and CBL’s reservations about URCA’s very expansive interpretation of the “affordability” concept as applied to CBL, the company has expended considerable financial resources to roll out Basic Television Services and began doing this through the MOU. The objective of the MOU was to extend Basic Television Services to remote and sparsely populated areas (principally on smaller Family Islands) not covered by CBL’s pay television services.

As a result of these efforts, there has been substantially increased access¹⁷ to television services in a number of areas in The Bahamas. Moreover, CBL has provided this service free of charge – in part because the economics of billing and collection are unviable in such areas.

Furthermore, CBL is concerned that URCA has expanded the scope of multichannel Basic Television Service offering under the USO. Schedule 5 refers to a six channel package. However, URCA, in Section 3.4.2 of the Consultation Document, refers to the offering as a “*minimum*” of six channels, implying that the Basic Television Service under the USO could require the provision of more than six channels.

The policy driver behind the Basic Television Services was to reach previously unserved areas. It was not, , the objective of the Basic Television Services USO to require CBL to provide the basic six channel service in areas where consumers already have access to PayTV services. CBL makes this point because URCA (at page 14 of the Consultation Document) indicates that the SuperBasic package meets the USO requirements for a Basic Television Service. However, the SuperBasic package should not be confused with universal service and the prices that CBL charges for the SuperBasic package should be subject to a cost based pricing analysis, and not an “affordability” principle, assuming this principle applies to Basic Television Services under the transitional USO provisions at all.

¹⁷ Presently 99% of the population has access to these services



There certainly is no legal or public policy basis for URCA to designate CBL's SuperBasic package as a USO service on the islands where that service is currently available. Such a designation would, in any event, be incompatible with the objectives of the Comms Act (section 4), which include enhancing the efficiency of the sector and productivity of the economy, promoting investment and innovation, and encouraging competition. The objective of "promoting affordable access...in all regions of The Bahamas" does not justify the application of a blanket "affordability" test to CBL's SuperBasic package, which is a competitive, commercial offering. CBL's license (clause 24.5) obligates CBL to provide services on terms that are "fair, reasonable and non-discriminatory." URCA may not superimpose an uneconomic "affordability" test on top of these requirements in the case of commercial services that go far beyond any conceivable definition of "Universal Service."

In summary, there is no justifiable basis for applying anything other than a transitional basic television USO to CBL which maintains CBL's pre-existing commitments under the MOU, as is clear from the ECSP (paragraph 54). In any event, the content of the four additional channels (apart from ZNS Channel 13 and the Parliamentary Channel) should be left up to CBL. If any guidance is to be given on the content of the additional four channels, it should be provided by the Minister and not URCA (as per section 41(1) of the Comms Act).



9. Suggested Precedents

URCA relies heavily on European precedents throughout the Consultation Document. Although the EU model certainly merits consideration as long as the pertinent differences are taken into account, there are other precedents that may be more suitable for The Bahamas.

Many European markets are characterised by small geographies with high-density population centres. The geographic size of the country and population density plays a significant role in the scope and cost of universal service. URCA's Consultation Document does not make a single mention of larger markets with lower population densities that may be suitable comparators for The Bahamas (for example, USA, Canada, Australia, and New Zealand).

URCA also has failed to include any developing markets in its research or any other Caribbean islands. It appears that URCA's research may not have included an examination of the reasons why universal service funds are not in operation most other Caribbean jurisdictions.

URCA's apparent unqualified reliance on EU precedents leads to a methodology bias. For example, certain aspects of the EU framework (such as the counting of intangible benefits in assessing unfair burden) are not followed in the USA, Canada, Australia and New Zealand or, indeed, in the majority of the EU member states.

In CBL's opinion, URCA should take care not to over-rely on precedents that are inappropriate and should undertake a proper assessment of the range of models that are in use around the world.



B. RESPONSE TO CONSULTATION QUESTIONS

CBL provides its responses to each of the Consultation Document Questions in the pages that follow.

Each question is numbered as in the Consultation Document.

Q.1: Inclusion of "access" in definition of basic telephony services

Q.1 Do respondents agree with URCA's proposal to include "access" in the definition Basic telephony services for universal service purposes?

RESPONSE:

URCA's proposal to include "access" in the definition of basic telephony services for universal service purposes is one of many instances in which URCA is attempting to "clarify" or "address ambiguities" in the face of significant conflicts, lacunae and anomalies that pervade the transitional USO provisions of the Comms Act.

CBL agrees that policy-makers and regulators have typically defined basic access to include voice-grade fixed access to the PSTN:

- USA: the definition of universal service is voice-grade access to the PSTN, with the ability to place and receive calls
- UK: Connection to a fixed network able to support voice telephony
- Canada: Individual line local service

However, it should be noted that such definitions pre-dated the explosion of mobile services, especially pre-paid mobile services that have extended access to areas unserved by BTC's fixed line network and access to voice service for the urban and rural poor. It would therefore be logical for URCA to review the convergence of mobile and fixed services for basic delivery service in the context of technology-neutral regulation. In particular, where network expansion is required, operators should have flexibility to deploy mobile or other fixed wireless technologies.



Due to errors or omissions in section 119(1) and Schedule 5 of the Comms Act 2009, URCA has proposed three interpretations to clarify the obligations and definition of basic telephony:

- Obligation: *“the provision of affordable basic telephony service to all populated areas”*
- Definition of basic telephony access: *“the provision of fixed voice telephony services including access and local and inter-island calls”*
- Definition of fixed voice telephony: *“a system of telecommunications in which telephonic equipment is employed in the transmission of speech or other sounds between points, with or without use of wires.”*

CBL proposes that URCA should take the opportunity to make recommendations to the Minister for the adoption of a revised USO policy based that is capable of practical implementation pursuant to section 41 of the Comms Act, or in the form of a draft Regulation for approval by the Government in accordance with paragraph 53 of the ECSP. Failing that, URCA should seek legislative changes to give effect to its proposed interpretations. Either of these recommendations will provide regulatory certainty to all operators in the communications sector.

Q.2: Definition of fixed voice telephony

Q.2 Do respondents agree with URCA’s proposed working definition of Fixed Voice Telephony for universal service purposes?

RESPONSE:

URCA’s proposed working definition of Fixed Voice Telephony for universal service purposes is one of many instances in which URCA is attempting to “clarify” or “address ambiguities” in the face of significant conflicts, lacunae and anomalies that pervade the transitional USO provisions of the Comms Act.

CBL believes that the main reason that the Comms Act does not define the term “fixed voice telephony” is that the legislation was designed to be technology-neutral. As such, the Act did not define cable television services or mobile voice. URCA should reconsider whether such a definition is needed because it moves the regulatory regime further away from the principle of technology-neutrality.



CBL proposes that URCA should take the opportunity to make recommendations to the Minister for the adoption of a revised USO policy that is capable of practical implementation pursuant to section 41 of the Comms Act, or in the form of a draft Regulation for approval by the Government in accordance with paragraph 53 of the ECSP. Failing that, URCA should seek legislative changes to give effect to its proposed interpretations. Either of these recommendations will provide regulatory certainty to all operators in the communications sector.

CBL adds that to the extent there may be a requirement to expand basic telephony services coverage to a currently unserved/underserved area for universal service purposes, this should be done using least cost technology.

Q.3: Exclusion of call management services and features

Q.3 Do respondents agree with URCA's proposal that call management services and features should be excluded from the Universal Service Obligation?

RESPONSE:

CBL agrees that call management services and features should not be included as part of a USO for Basic Telephony Services.

It is worth noting that call management services and features are generally very high margin services that make a significant contribution to the recovery of overall basic telephony service costs. Moreover, these services and features are not available on a standalone basis, but only as an add-on to basic telephony service. Any calculation of a funding requirement for a USO for Basic Telephony Services should, in CBL's view, include consideration of call management services and features margins.

Q.4: Burden that price is affordable

Q.4 Do respondents agree with URCA's proposal that the burden should rest upon the designated USP to satisfy URCA that any charge imposed by the USP for the service is affordable, having regards to the factors listed?

RESPONSE:

CBL has addressed the question of how "affordability" should be assessed, including the range of



criteria to be considered, in Section A.7 above.

With respect to the question of burden, CBL considers that designated USPs as well as other interested parties should have the right to comment on and provide any evidence they consider relevant to the assessment of the “affordability” of the price of any designated USO service. An open and transparent process, in this respect, is necessary given that any finding by URCA that the “affordable” price level for a designated USO service is less than the cost of the service in question would potentially generate a significant USO funding requirement and, as already noted, would also create significant inefficiencies and market distortions.

URCA’s proposal makes such a consideration difficult.

Firstly, the level of guidance offered in the Consultation Document is insufficient. Other than simply listing the factors, URCA makes no effort to explain how it wishes operators to present this information and where some of the secondary data might be sourced. Unless there is a practical applied example of how URCA proposes to use information and factors identified, there can be little confidence on the outcome of the affordability analysis. In addition, URCA makes no attempt to ascertain whether the local data necessary for the listed criteria is actually available in The Bahamas. Furthermore, URCA does not distinguish between affordability analysis for existing and new services – is this required for one or both types of services? CBL recommends that URCA provides much greater clarity in how the affordability analyses can be carried out, including worked examples, and sources of data; otherwise it will be impossible to move from theory to practice.

That said, ultimately the burden of proof rests on URCA as to the affordability of a given price level. The discussion referenced by URCA from the FCC makes no mention on the burden of proof being on operators; rather, the FCC points to data that state regulators have access to, and are best suited to obtain and analyse. Any decision URCA renders on the “affordability” of a given service price must include supporting rationale and evidence for its findings. Consequently, CBL considers that it is critically important that URCA rely on a well defined and balanced set of affordability criteria for affordability assessments, while also taking into account any other relevant information provided by the USP in question or other interested parties.

When rendering a decision on the affordability of the price of a USO, especially in any case where URCA finds the price should be set below cost, URCA should also address electronic communications policy



objective that is advanced by the measure and also demonstrate compliance with the guidelines set out in section 5(a), (b) and (c), namely that

- a) *market forces shall be relied upon as much as possible as the means of achieving the electronic communications policy objectives;*
- b) *regulatory and other measures shall be introduced –*
 - (i) *where in the view of URCA market forces are unlikely to achieve electronic communications policy objectives within a reasonable timeframe; and*
 - (ii) *having due regard to the cost implications of those regulatory and other measures of affected parties;*
- c) *regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory;*

Q.5: Minimum bandwidth throughput for CBL’s Internet services

Q.5 Do respondents agree with URCA’s proposal not to specify a bandwidth throughput for CBL’s Internet Services USO?

RESPONSE:

URCA’s question presupposes that there is a legally enforceable USO for Internet applicable to CBL. CBL challenges this assumption for the reasons outlined below and in section A.1.

URCA’s proposal not to specify a bandwidth throughput for CBL’s Internet Service USO is based on one of many instances wherein URCA is attempting to “clarify” or “address ambiguities” in the face of significant conflicts, lacunae and anomalies that pervade the USO interim provisions of the Comms Act.

Paragraph 39 of the ECSP identified CBL as the USO provider of Pay TV and internet services. There is no definition of “internet services” in the Comms Act.

We notice that section 119 of the Comms Act refers to:

- (a) affordable basic telephony services to all populated areas;



- (b) affordable basic dial-up internet services to all populated areas;
- (c) basic dial-up internet services to specified institutions;
- (d) affordable public access to pay apparatus; and
- (e) affordable basic television services to all populated areas and specified institutions.

Section 119 did not contemplate “internet services” in the way that they are set out in Schedule 5. Furthermore, the schedule does not define “internet services”. Section 119 only makes reference to dial-up internet services but schedule 5 introduces the internet obligations and the operator (CBL) for “internet services.” By contrast, earlier in the Consultation Document (basic telephony), where URCA finds an inconsistency between section 119 and schedule 5, it relies on section 119. URCA fails to apply the same logic in relation to internet services to be provided by CBL.

Section 41 of the Comms Act indicates that the Minister shall specify in the sector policy or in a notice published in the Gazette the universal services and the universal service obligations. In paragraph 38 of the ECSP the Government has defined the scope of USO and refers to the Comms Act. Paragraph 54 of the ECSP policy refers back to the USO policy as set out in the Comms Act. We find the ECSP and the Act seem to be vague and circuitous as to the policy on USO, and the only reasonable way to have a reasonable discussion of an appropriate and sustainable universal service policy is to give effect to the requirement under section 41 of the Act (for the Minister to make a determination of the USO and to provide some elucidation on the USO policy) and move away from the transitional USO provisions that have proved to be anything but "transitional".

URCA should interpret the Internet USO applicable to CBL very narrowly in line with the interim nature of the section 119/Schedule 5 provisions, as set forth in the ECSP (paragraph 54). Since CBL had no obligation to provide Internet services prior to passage of the Comms Act, no USO should be imposed on it at this time, pending review by the Minister of the current ECSP and possible action under section 41 of the Comms Act. Alternatively, URCA should exercise its powers under section 42(5)(b) of the Comms Act and relieve CBL of the Internet USO beyond the normal service provision commercially on offer.



Q.6: Retention of BTC's Dial-Up Internet Services USO

Q.6 Do respondents agree with URCA's proposal to retain BTC's Basic Dial-Up Internet Services USO (i.e., narrowband)?

RESPONSE: CBL questions the practicality of designating BTC's basic dial-up Internet as a USO service. In any event, as far as CBL can determine, it appears as though BTC no longer offers dial-up Internet service. Its focus is on the provision of broadband Internet services using both DSL and Wi-Max technologies. As its service area coverage map below shows, BTC is currently offering broadband Internet services throughout The Bahamas. It may be more efficacious to designate their broadband as a USO.

Figure 2 - BTC's Current Broadband Internet Coverage¹⁸



BTC has also spoken highly of the ability of its new 4G mobile wireless network to serve as a primary means for Bahamians to access the Internet. The chief executive of BTC recently stated that "... he expected that more than 50 per cent of the carrier's 350,000 – 400,000 cellular subscribers to be using their cell phones as the primary means of Internet access within the next three-five years, using the platforms the company was now putting in place."¹⁹

If URCA is minded to nevertheless implement a dial-up Internet service USO, its decision to do so should

¹⁸ <http://67.19.48.17/~batelnet/tools-resources/coverage-area-map/>.

¹⁹ Tribune Business, *Bahamas Hemisphere's Worst for Mobile Broadband Usage*, June 6, 2012.



be supported with market data showing sufficient current and expected demand exists for the service at the level of coverage contemplated and that there are no competitive alternatives available for the service currently or within a reasonable period time.

Q.7: Proposed minimum distance to pay apparatus

Q.7 Do respondents agree with URCA’s proposal that the public pay apparatus be available within twenty minutes walking distance (One (1) mile) from a populated area to a pay apparatus, or from one pay apparatus to another within the same populated area?

Q.8: Mandated pay apparatus in public places

Q.8 Do respondents agree with URCA’s proposal that BTC continue to make available a specified (minimum) number of public pay apparatus available in all public places (e.g., shopping malls and shopping centres, public parks, public buildings, Specified Institutions, marinas, ports of entry, public tertiary educational institutions, etc.?)

RESPONSE:

CBL questions the practicality of URCA’s proposal to include a public pay apparatus as part of a USO and, in particular, URCA’s proposal that the public pay apparatus be available within twenty minute walking distance or one mile from all populated areas. This seems contrary to national, regional and international trends given the growth in penetration of mobile services and mobile coverage.²⁰

If URCA is minded to implement a public payphone apparatus USO, its decision to do so should be supported with market data showing sufficient current and expected demand exists for the service at the level of coverage contemplated and that there are no competitive alternatives available for the service currently or within a reasonable period time. In this regard, we note that URCA has provided no

²⁰ “Several Member States have exercised their discretion not to designate any USO provider, or have relaxed obligations concerning service elements that are already catered for by the market (e.g. public payphones and directories) on page 3 of the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: Universal service in e-communications: report on the outcome of the public consultation and the third periodic review of the scope in accordance with Article 15 of Directive 2002/22/EC. November 23, 2011. COM(2011) 795



rationale for why 20 minutes (or 1 km) is the appropriate measure in terms of payphone access, and has offered no demand assessments. Before deciding how to implement the contemplated public payphone apparatus USO policy, URCA should have an accurate estimate of the cost of the proposed measure so that it can properly be evaluated pursuant to section 5 of the Comms Act.

CBL questions the practicality of URCA's proposal to include a public pay apparatus as part of the USO generally and, in particular, URCA's proposal that BTC continue to make available a specified minimum number of public pay apparatus available in all public places.

URCA should consider forensically the current and expected demand levels for the services in those public places as well as competitive alternatives available for the service currently or within a reasonable period time. As well, before deciding to implement the contemplated public payphone apparatus USO policy, it should have an accurate estimate of its cost so that the proposal can properly be evaluated pursuant to section 5 of the Comms Act.

CBL is not proposing that any of BTC's existing payphones should be withdrawn from service, at least until such time that there is demonstrated minimal demand for the service and a practical substitute is available. However, there would clearly be no rationale for directing BTC to increase the number of payphones in designated public places in view of the declining demand for the service and the likely significant cost of such a program.

Q.9: Channels in CBL Basic Television Services package

Q.9 Do respondents agree with URCA's proposal that the additional channels comprising the Basic Television Services package should be sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment?

RESPONSE:

URCA has give consideration in its Consultation and Statement of Results on Public Service Broadcasting to the issue of content and these matters were covered there. It is CBL's position that the provision of Bahamian content (ZNS and the Parliamentary Channel) is the responsibility of BCB and it would be an interference with commercial freedom to require that the additional channels comprising the Basic Television Services package should have these characteristics.



Q.10: Cost calculation for Basic TELEVISION Services package

Q.10 Do respondents agree with URCA's proposal that total access costs not be borne solely by the Basic Television Services USO multichannel offering but rather be shared by the other USP's communications services that share the same access connection?

RESPONSE:

As explained in the previous question and in detail in the Introduction, CBL does not consider that the Basic Television Services USO proposed in the Consultation Document by URCA is necessary, appropriate or, given the inconsistencies in the Comms Act in this respect, required.

That said, were a Basic Television Services USO nevertheless mandated and subsequently implemented, it would not be appropriate to allocate some arbitrary portion of access costs to other services. Doing so, would have the effect of artificially lowering the price of the mandated service (assuming the price were set on this contemplated modified cost oriented basis) and, in the process, create implicit cross-subsidies between the mandated service and other commercial communications services offered by CBL.

Such an approach could be used by URCA to artificially reduce or more likely eliminate the need for a USO funding requirement for the mandated service. However, the true effect of the approach would be to simply shift any potential funding requirement from a USF to customers of other communications services offered by CBL. This would be a regressive policy measure (contrary to the objectives set out under section 5 of the Comms Act) in that with the liberalization of the communications market, efforts should be aimed at reducing or eliminating rather than creating artificial and market distorting cross-subsidies.

While CBL does not support this proposed costing measure, to the extent URCA considers that it may be appropriate in the case of cable television services, then it should be equally appropriate in the case of basic telephony services. In that case, total access costs should also not be borne solely by the Basic Telephony Services offering but rather be shared by the USP's other communications services that share the same access connection. Regulatory symmetry and competitive neutrality would dictate that an equivalent approach be adopted for all USPs.

It is also important to recognize that in CBL's case, the contemplated mandated Basic Television Services



USO would constitute a new service offering. As such, were the mandated price of the new service artificially set below true costs, based on arbitrary cost allocation assumptions, the take up of the service would be artificially stimulated. If the package were to be made available to existing CBL subscribers, this could have the effect of cannibalizing CBL's commercial pay television services to a greater degree than otherwise and, thereby, placing an even greater burden on its other services to subsidize the new mandated Basic Television Services USO offering. This would create significant inefficiencies, act as a disincentive to further investment and innovation, and also serve as a barrier to new entry.

Q.11: Definition of designated Specified Institutions

Q.11 Do respondents agree with URCA's proposal that designated Specified Institutions should be defined as follows:

- **Public and church operated schools would mean those public and church operated schools registered with the Ministry of Education;**
- **Public libraries would mean those public libraries registered with the Ministry of Education;**
- **Public hospitals and public medical clinics would mean those public hospitals and clinics registered and/or operated by the Ministry of Health and/or the Public Hospital Authority;**
- **Senior citizens homes would mean those senior citizens homes registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development; and**
- **Orphanages will mean children's homes registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development.**

RESPONSE:

CBL understands and supports the importance of bringing the Internet to community institutions that will enable public access to e-government and other information services. In fact, CBL currently has a programme in place that facilitates the provision of Internet services to charitable institutions, public schools and libraries as part of our commitment to the community. While CBL supports such programmes on a voluntary basis, the proposed USO would establish a potentially open-ended obligation without parameters that would be an administrative nightmare to implement and maintain.



The Comms Act does not specify the quantity of the service to be provided, nor the principles of use by these institutions (for example that the institution should not be able to charge for or resell the service). Of greater concern though is that URCA has taken upon itself to change the language of the Comms Act by substituting what is required in the legislation (for example, the Comms Act requires institutions to be “registered with URCA” but URCA simply proposes to substitute this language with “registered with Ministry of []”). If there are issues with the legislation, these should be corrected rather than operate ultra vires.

There needs to be clarification on the implementation of the Internet obligations in the face of dual designation. Is the intention of the universal service policy that a school or library is entitled to free dial-up Internet (provided by BTC) and free Internet (provided by CBL)? These omissions by URCA focuses the attention on a system where dual USPs are designated for different types of Internet services, and without precedence, assessment of geographic coverage or overlap.

CBL submits that the obligation to provide services to such institutions should be limited to making one standard installation at a single point on the premises reasonably convenient to use and shall not require wiring of the premises. In the event service calls or repairs are required, CBL shall be entitled to make a fair and reasonable charge for any repairs other than those necessary to effect delivery of signal to a single point on the premises reasonably convenient to use. The service provision is Basic Television Services.

In addition, a key underlying principle behind the provision of services to specific institutions is that such institutions shall not be able to charge any price in relation to the provided service or as an entry fee into the institutions (once in, citizens could access for free the USO and other services provided by the specified institutions. Nor should the service be able to be resold by the specified institutions.

Q.12: Specified Institutions registration and publication

Q.12 Do respondents agree with URCA’s proposal that URCA establish a Specified Institutions Register and publish that Register semi-annually on its Website?

RESPONSE:

Yes



Q.13: Definition of Community Centers

Q.13 Do respondents agree with URCA's proposed working definition of Community Centres?

Q.14: Information required from Community Centers

Q.14 Do respondents agree with URCA's proposal that a Community Center should provide, at a minimum, the following information to be registered with URCA for consideration of the universal services specified at paragraph 2(e)(vi) of Schedule 5 of the Communications Act?

- The exact location, amenities and its hours of operation;
- List of the types of community and developmental programs, activities or services currently offered at the Center;
- The benefits (actual and intended, current and future) provided by the Center to the community where the Center is located;
- Evidence to demonstrate the availability (if any) of Information and Communications Technology (ICT) Services, and a schedule of any computer literacy and other ICT courses offered at the Center; and
- Facilities (if any) to accommodate the differently-abled members of society (e.g., ramps etc.).

RESPONSE:

URCA proposes to limit its role to an annual review and publication of the information requirements for a community centre to be eligible for free universal services, and a website register of all community centres. However, verification of these initial requirements is left to the USPs, and a dispute resolution process proposed in the event that there is disagreement between the USP and the Community Centre.

CBL is concerned with the costs of this verification scheme. This is a genuine concern, given the process proposed is annual and can lead to substantial recurring expenses (opportunity cost of staff expenses and time) by URCA and directly the USPs (especially associated with verification on the Family Islands). CBL strongly objects to the transfer of this burden to the USPs – URCA should fulfil this role as this is in line with the requirements of the Comms Act.



In CBL's view, a "Community Center" means a building, structure or part thereof, operated by or on behalf of a government or public authority or an incorporated **non-profit organisation**, which facility is accessible to all residents of a locality or community in which the facility is established and is utilized by the residents of that locality or community **free of charge or for a nominal fee**, for the provision of community activities such as but not limited to recreation, arts, crafts, museums, libraries, social and charitable activities, group activities, social support public information , educational development and cultural services and activities and other related purposes which are open for minimum of eight (8) consecutive hours each day.

The proposed criteria in Q.14 should be expanded to include all the requirements identified above.

Q.15: Community Centers annual requirements

Q.15 Do respondents agree with URCA's proposal that Community Centres demonstrate each year they meet the published requirements to both URCA and the USP from which they are seeking universal services?

RESPONSE:

CBL agrees with the proposed annual adherence requirement.

Q.16: Inclusion of USO for differently-abled persons

Q.16 Do respondents agree with URCA's proposal that Universal Services be accessible to the differently-abled or those members of the society with functional impairment?

Q.17: Subsidized specialized equipment for the differently-abled

Q.17 Do respondents agree with URCA's proposal that specialized equipment with the features identified in Section 3.6 of this consultation be made available at subsidized rates to the differently-abled?

Q.18: Register of differently-abled

Q.18 Do respondents agree with URCA's proposal to implement a reliable register of those differently-abled members of the society who are to benefit from the USO services?



RESPONSE:

Not applicable to CBL.

Q.19: Distance between dwellings for “populated areas”

Q.19 Do respondents agree with URCA’s proposal to adopt 220 yards as the maximum distance between dwellings for the purposes of populated areas?

RESPONSE:

URCA proposes to use a distance of 220 yards (based on European estimates) between dwellings to inform itself whether a USP is providing services to populated areas.

URCA’s proposed definition of “populated area” does not appear to have been developed with the specific geographic, socio-cultural and administrative characteristics of The Bahamas in mind. Although benchmarks from countries like France and Austria may be informative, they are inapposite for The Bahamas because of the very different topographies, government administrative conventions and socio-cultural norms (such as the design of towns, villages and other population centres.)

URCA’s clarification of populated areas is in any event unworkable. In the absence of publicly available information, how can measurable targets be set? There may also be practical issues with implementation. Does the Department of Statistics have sufficient information to know which households would qualify as lying in ‘populated areas’? Without this information it will be almost impossible for the universal service providers to know where to extend their networks and for URCA to enforce or monitor coverage requirements.

The references in the Consultation Document cited by URCA vary widely as to what may constitute a populated area in one country versus another, depending on the distance between dwellings (anywhere from 55 to 220 yards), the number of dwellings (50 or more), the number of inhabitants (50 to 500), the types of dwellings, etc.

At a practical level, there is no discussion on whether the 220 yards is a radius within which all 10 households must live, whether it is 10 households in a straight line with each house 220 yards apart, or



some other measurement.

Therefore, there is no way of assessing whether such proposals are reasonable or not, other than by carrying out research suited to The Bahamas. CBL is concerned yet again by URCA's methodology informed by examples from Europe, rather than taking the time and effort to assess how it should discharge its duties with due care. In this instance, has URCA met with Government officials, including administrators on Family Island or similar relevant officials to develop a definition that is suitable to The Bahamas? If not, why not?

The more important question is: "what are the cost implications of adopting this proposed populated area definition for USO purposes?" If the intention is to mandate wireline telephony and cable network extensions into all populated areas up to this defined limit in The Bahamas that are currently unserved by one or both networks, then the definition may well result in an excessive and unwarranted cost burden on USPs and, ultimately, consumers. No such assessment was seemingly conducted by URCA.

There are more efficient and effective means for providing telephony and broadband Internet services in areas of lower population density and remote areas of The Bahamas using wireless rather than wireline (3G and 4G) technologies. The proposed definition of populated areas based on the number of yards between inhabited dwellings would have considerably less relevance were wireless technology used to provide service to unserved or underserved areas of the country.

CBL would be willing to work with the Government, URCA and other industry participants to develop a workable definition of "populated area" and realistic solutions for reaching these areas in keeping with a forward-looking universal service policy.

Q.20: Definition of "inhabited dwelling"

Q.20 Do respondents agree with URCA's proposal that "inhabited dwelling" should mean dwelling that are:

- **Non-transient in nature;**
- **residential (non-commercial);**
- **inhabited (not vacant, partially constructed or abandoned)?**

RESPONSE:



It is difficult to agree or disagree with URCA's proposal definition of "inhabited dwelling". It is unclear how URCA intends to apply and verify dwelling counts on this defined basis. Ideally, URCA should use the Department of Statistics' definition of a dwelling, (inhabited or vacant), as it would maintain consistency and render it more verifiable.

See also CBL's response to Q.19 above.

Q.21: Individual islands as unit of assessment of net avoidable cost (NAC)

Q.21 Do respondents agree with URCA's proposal that the appropriate unit of assessment of net avoidable cost be that of the individual islands?

RESPONSE:

CBL has serious concerns with the regulatory burden and cost associated with the recently established cost separation requirements, which are national in scope, especially as they pertain to CBL's operations. While cost separation requirements are routinely applied in the case of incumbent telecommunications carriers, they are rarely, if ever, imposed on cable television operators. Disaggregating the cost separation accounts by island will result in a significant increase in regulatory burden, cost and complexity. Significant cost and effort will be required to establish clear guidelines, vet and ultimately audit the results of any such exercise, which will by necessity involve many subjective cost allocation assumptions.

URCA has not provided any alternatives before proposing the use of individual islands (such as groupings of islands which is a higher level of aggregation, or more disaggregated level on an island, such as district or town). Since URCA has justified its proposal on the basis of complexity of modelling, should the decision not be taken once there is an assessment by each USP of the data requirements of the modelling and whether this data can support island-level analysis or another alternative?

Notwithstanding the above, in the case of The Bahamas, the most practical disaggregated geographic area that would be relevant for the purpose of estimating net avoidable costs or profitability would be individual islands. However, to place some degree of control over the scope of the exercise, a population (or other criterion) threshold should be established to limit the number of individual islands subject to the analysis. All additional islands falling below the threshold could be placed into a residual category.



CBL also is concerned that URCA appears to have fundamentally misinterpreted the provisions of the Comms Act, and in particular section 44(3), relating to the determination of NAC. In this respect, CBL submits that the provisions outlined in section 44(3) would prohibit URCA from financing many of the USOs that are being proposed in the Consultation Document. As such, CBL is of the view that many of the proposed USOs could not be funded via the USF and therefore are not operable and should not be implemented by URCA.

Section 44(3) of the Comms Act reads as follows:

Subject to subsection (2), the universal service fund shall be administered by URCA and may only be applied to the installation and maintenance of networks and the provision of universal services in an area where the gross avoidable cost of providing the universal services exceeds the revenue derived from those services.

In section 4.1.1 of the Consultation Document (page 26), URCA proposes that the geographic level of analysis will be the individual island and that the USP will be required to ascertain:

- *Island profitability:* That is, determining on which islands it is unprofitable to provide the USO services;
- *Customer profitability:* That is, determining to which groups of end users, USO services are provided at a loss on islands which are profitable overall.

CBL submits that the end-users to which “USO services are provided at loss on islands which are profitable overall” would not be eligible for USF compensation pursuant to section 44(3) of the Comms Act. This is because the provision is very specific in that it refers only to unprofitable “areas” and not to unprofitable “end users” or “groups of end users”.

An important implication of this line of reasoning is that USPs would not be able to be compensated for the net USO cost of providing services at zero price to “Specified Institutions” in profitable islands.

Based on provisions set out in the Comms Act, any USO that results in “un-economic” customers (on otherwise profitable islands) cannot be funded via a USF. Consequently, the second element of URCA’s USF proposal relating to individual or groups of unprofitable end users is effectively inoperable.



Q.22: Relevant costs in NAC

Q.22 Do respondents agree with URCA’s proposal as detailed above and that the relevant costs that the Universal Service Provider should use in its calculation of its Universal Service Obligation should be:

- **Capital costs that can be avoided;**
- **Avoidable operating expenditures; and**
- **Avoidable overheads?**

RESPONSE:

At the outset, CBL reiterates that it has serious concerns with the overall level of regulatory burden, cost and complexity, which by design will involve a significant degree of subjectivity, that would result from the adoption of URCA’s net USO cost estimation proposals.

While CBL does not necessarily disagree with the above-listed avoidable cost elements that would need to be estimated under the net avoidable cost approach proposed, URCA would need to establish specific and detailed guidelines for the implementation of its proposed approach. Without clear guidelines there would be no assurance that the proposed approach would be implemented in a fair, consistent and competitively neutral manner.

CBL also has a number of concerns with the implementation of the proposed costing exercise.

First, as explained above in Q.21, URCA’s proposed approach involves the estimation of the avoidable costs of providing USO services on uneconomic (unprofitable) islands and to uneconomic end users on profitable islands. Yet section 44(3) of the Comms Act provides for USO funding for uneconomic areas, not uneconomic end users.

Second, under the costing proposal under consideration in Q.10, URCA proposed that access costs be shared among all communications services that can be provided over the access facility by a USP. It is unclear how such an adjustment (or cost sharing formula) would be applied, if at all, for the purpose of estimating estimated avoidable costs. While CBL disagrees with URCA’s costing proposal set out in Q.10, if it were adopted, guidelines for the adjustment should be established and applied in an equivalent manner to all USPs for regulatory symmetry and competitive neutrality purposes.



Third, and in a related respect, CBL is concerned that the proposed costing methodology contemplated under URCA's Q.10 for potential price-setting purposes together with URCA's proposed NAC approach for USO funding purposes could ensure, on one hand, that prices of USO services are uneconomic while, on the other, ensuring that no USO funding would be provided. In other words, the regulated price of the USO service (in this case URCA's proposed Basic Television Service USO) would be set below cost, while the ability for the USP to receive any USO funding would effectively be impossible under URCA's proposed NAC approach. In effect, URCA's overall approach appears to be aimed at forcing USPs to cross-subsidize USO services with non-USO services. Such an approach would be antithetical to the objectives of market liberalization and increased reliance on market forces.

Q.23: Direct and indirect revenues in NAC

Q.23 Do respondents agree with URCA's proposal that incremental revenues for the purposes of USO be inclusive of the direct and indirect revenues as detailed in Section 4.1.2 of the Public Consultation document?

RESPONSE:

See response to questions 21-22.

CBL agrees that incremental revenues should include direct and indirect revenues as may be applicable for existing USO services. However, it would be helpful for URCA to provide guidance on the direct revenues that are relevant to each type of universal service.

The NAC-based USO funding requirement methodology discussed in the Consultation Document is based on the European Union (EU) approach applied to incumbent basic telephony service providers. It is obvious from the complete absence of examples in the Consultation Document relating to cable TV service providers that the approach was not necessarily intended for cable TV services. Moreover, there are no examples of net avoidable cost estimates for newly established USO service requirements, as is the case contemplated by URCA – i.e., through the mandated introduction of new six-channel cable TV service.

That said, were a Basic Television Services USO nevertheless mandated and subsequently implemented, the calculation of NAC would also have to take into account a third effect – i.e., the revenue loss associated with the introduction of the mandated new service, which would otherwise have been



avoidable. If the television USO package were to be made available to existing CBL subscribers, it could attract two types of customers – (i) those with no cable television package and (ii) those with existing CBL cable television packages. For every existing CBL customer that migrates to the new Basic Television Services USO, CBL would lose revenues equivalent to the difference in the prices of the existing cable television services purchased by migrating customers and the approved price for the Basic Television Services USO. The larger the scale of the migration, the larger the revenue loss. Absent measures to limit any such migration, the mandated new service could have a very significant revenue reduction impact on CBL's existing commercial cable television services, which would have to be taken in account when determining the funding requirement for any such mandated Basic Television Services USO (which, as already noted, CBL considers as inappropriate and unnecessary). Were URCA to insist on implementing a Basic Television Services USO package, then it should also consider restricting eligibility for the service only to designated needy households, based on a similar principle as that requiring BTC to make available a discounted residential monthly telephone subscription only to qualifying senior citizens.

Q.24: Efficiency adjustment in NAC

Q.24 Do respondents agree with URCA's proposal to make an efficiency adjustment based on any annual productivity gains the USPs achieve?

RESPONSE:

CBL agrees that, for the purpose of estimating net USO costs, an efficiency adjustment to measured avoidable costs may be necessary. Based on URCA's comments in the Consultation Document, however, it appears that the onus would be placed on the USP to defend the efficiency of its measured avoidable USO costs. CBL is concerned about the continued shifting of the regulatory burden to the operators. In this case, USPs must demonstrate the reasonableness of their efficiency approach. Surely this assessment should be performed by URCA (as was the case in the recent efficiency study of BTC's costs)

If URCA did not agree with the USP, it appears URCA would then apply an efficiency adjustment on its own accord based, as suggested in the question, on "any annual productivity gains the USPs achieve".

It is not clear from the Consultation Document what specific type of "annual productivity gain" adjustment URCA may apply in such cases – whether it would be based on a USP's total or partial



productivity growth covering a reasonable period of time (to avoid short term productivity performance anomalies) or some other approach. In CBL's view, any such adjustment should be fact-based and not subjective in nature. CBL's concerns about subjectivity are heightened by URCA's statement that "one way for a USP to assess its efficiency could be for it to compare the ratio between its capital and operating expenditures." URCA provides no guidance on definitions, which vary widely across jurisdictions.

In any event, URCA should clearly specify the approach it would take in this respect and ensure that is applied on an equivalent basis to all USPs, using appropriate USP-specific information and data as may be applicable, for regulatory symmetry and competitive neutrality purposes.

Q.25: Inclusion of intangible benefits in NAC

Q.25 Do respondents believe that each of the benefits listed in Section 4.1.4 of the Public Consultation document are pertinent to the net cost calculation in The Bahamas?

RESPONSE:

CBL agrees that regulators in some (but certainly not all) jurisdictions make use of various forms of potential intangible benefits as part of the analysis. This is true of some EU countries, for example.

CBL also agrees with URCA's comment that "... intangible benefits are difficult to quantify and a degree of judgment is inevitably involved" (page 30 of the Consultation Document). URCA suggest four general types of intangible benefits could be taken into account for the purpose of calculating net USO cost. These include brand recognition, ubiquity, life cycle effects and marketing data. The brief survey of approaches adopted in the EU, which is included in the Consultation Document (pages 3—35), shows that a wide variety of intangible benefit approaches have been adopted from one EU country to the next. One thing that the survey makes clear is that not just a "degree of judgment" is necessary to estimate the value of intangible benefits, but a significant degree of judgment and subjectivity.

To the extent that URCA decides to include one or more of the proposed intangible benefit considerations in its determination of USO-related NACs, CBL is of the view that URCA should clearly specify the nature of each proposed intangible benefit adjustment, along with fact-based supporting evidence in each case. For example, URCA recommends using the approach adopted by OFCOM for estimating brand recognition (20 percent of BT's retail advertising and sales expenditures). However,



URCA simply takes a value of 10 percent and states that this reflects “some degree of the corporate goodwill and brand appeal of the USPs in the Bahamian electronic communications context.” This demonstrates URCA’s disregard for reasoned decision-making. URCA should explain how it came to the conclusion that half of OFCOM’s estimate is appropriate for The Bahamas.

All such adjustments should be applied by URCA on an equivalent basis to all USPs, using appropriate USP-specific information and data as may be applicable, for regulatory symmetry and competitive neutrality purposes.

Q.26: Methodology for calculating intangible benefits

Q.26 What method or combination of methods for calculating each of the specific benefits detailed in this Public Consultation document (at section 5.1.4) do respondents consider to be the most appropriate?

RESPONSE:

Although many examples of intangible benefit considerations are provided in the Consultation Document, not one pertains to cable television operators. All of the examples relate to the provision of basic telephony services. In virtually all cases, they relate to large incumbent carriers in the EU which are tens if not hundreds of times larger than carriers in The Bahamas. This further strengthens the case for removal of the USOs imposed on CBL.

URCA’s suggested intangible benefit valuations, as set out in the Consultation Document, are all highly subjective and arbitrary in nature. As well, CBL notes that accounting separation guidelines require cost-effectiveness in cost accounting. Using any of the proposed cost adjustment proxies described in the Consultation Document would appear to contravene that principle.

URCA has proposed possible adjustments for four factors: brand recognition, ubiquity, life cycle effect, and marketing effects.

With respect to brand recognition, for instance, URCA proposes to assume that brand recognition value can be simply proxied as a percentage of advertising and sales expenditures. This approach appears to be based on experience drawn from a few very large EU countries (Italy, France, Spain and the UK). It is not clear what other countries, especially Caribbean countries, may do in this respect, if anything. It is



also unclear what specific advertising and sales expenditures should be taken into account. In any event, in CBL's view, such an approach would be entirely arbitrary.

With respect to ubiquity, URCA suggests that there are advantages for a designated USP by having a greater profile with potential customers or existing customers that may migrate across the Bahamian archipelago from unprofitable areas to profitable areas. URCA proposes that this suggested ubiquity benefit could be estimated as the "per-line net contribution to profit of customers or households who migrate". CBL fails to understand how this proposed per-line net contribution to profit could be reliably calculated or how it relates to the valuation of ubiquity. It appears to be highly arbitrary in nature.

With respect to life cycle effects, URCA suggests that there is a benefit arising from the proportion of lines which are currently unprofitable, whether on islands or by customers, which are likely to be profitable in the future. URCA proposes that this suggested benefit would therefore be determined by the net value of the number of households that switch from being unprofitable to profitable as income grows and the difference between the cost of customer acquisition and customer retention as barriers to switching are removed (e.g., number portability, indirect access). In CBL's view, the calculation of this proposed benefit would be highly complex and ultimately inaccurate. It also would fail to take into account households who were profitable but became unprofitable when services were discontinued or usage levels reduced. As well, it fails to consider loss of profitable customers to competitors. Overall, assuming it could be estimated, this proposed adjustment would be highly subjective in nature.

Lastly, with respect to marketing effects, URCA suggests that there are potential commercial benefits derived from being designated the USP arising from, inter alia, the commercialization of customer usage data and advertisements on public apparatus kiosks and/or Wi-Fi hot spots in unprofitable islands. It appears that URCA intends to focus on the former benefit only, namely commercialization of customer usage data. URCA's preliminary view is to equate the benefits to commercialization of the usage data to the net revenue derived from that commercialisation. Again, it is not clear to CBL how URCA intends to estimate the net revenue derived from the commercialisation of usage data. However, this exercise would be highly complex to implement and, in any event, highly subjective in terms of outcome.

Overall, CBL has serious concerns with the level of complexity and the highly subjective nature of URCA's intangible benefit estimation proposals. It is far from clear that the proposed intangible benefits are even mutually exclusive or have any real possibility of materialising. Furthermore, the costs of making these assessments would be exorbitant for URCA and USPs alike, and the burden associated with



completing the calculations would be wholly disproportionate.

Q.27: Determination of an unfair burden

Q.27 Do respondents agree with URCA's proposed approach to establish a threshold for the determination of an unfair burden and should that threshold be set at 80%?

RESPONSE:

CBL is not opposed to the establishment of a market share threshold of 80% above which no unfair burden may be presumed to exist. This approach is followed in some EU countries. However, the establishment of such a threshold should not preclude a USP from applying for USO funding if it believes it can make a reasonable case that it is in fact bearing an unfair USO burden. Moreover, CBL notes that different parties may disagree on the definition of the relevant market (especially in view of the rapid changes in the electronic communications sector) and, therefore, how market share should in fact be calculated (revenues, minutes, connections, subscribers, etc.?).

Q.28: Cost of administering USF relative to the net transfer to USP

Q.28 Do respondents agree with URCA's proposed approach, in the instance where the regulatory cost of administering the USP are disproportionate to the net transfer to the USP that the USP bears the net USO cost?

RESPONSE:

CBL agrees with URCA's proposed approach.

Q.29: URCA examine rate of return on capital employed (ROCE) of USP

Q.29 Do respondents agree with URCA's proposed approach, in the instance where the regulatory cost of administering the USP are not disproportionate to the administrative cost of establishing the USF, that URCA examine whether or not the USP is able to achieve a fair rate of return on capital employed (ROCE) and the extent to which the USPs can rely on revenues from non-USO services to support the provision of the USO services?

RESPONSE:



CBL agrees that any net USO cost incurred by a USP should be material before the USP would be eligible to receive USO funding.

That said, CBL notes that the above-noted proposed USO funding eligibility criterion as it stands is vague and subjective. It is unclear what might be considered by URCA to be a “fair” overall ROCE or, alternatively, a “fair” non-USO service related ROCE and, therefore, what precise profitability test criterion would be used to determine whether or not a USP would be eligible for USO funding. Assuming it adopts this approach, in CBL’s submission, URCA should clearly specify the threshold profitability level or impact that it would rely on so USPs would have a clear understanding of this aspect of URCA’s proposed USO funding eligibility test. URCA should also describe the basis for any threshold profitability level that it may set in this regard.

In this respect, CBL notes that a ROCE determined by URCA for price regulated services would not be appropriate in the case on non-price regulated services.

CBL also has two other concerns with the proposed profitability test. First, profits can fluctuate from year to year depending on a variety of factors, many of which are outside the control of the USP (e.g., economy-wide recessions). Reliance on annual profit performance as a USO funding trigger therefore could create significant uncertainty. Second, the proposed ROCE-based criterion could have the perverse incentive of rewarding an inefficient USP with low profitability on its non-USO services relative to an efficient USP with higher profitability on its respective non-USO services. This could potentially lead to inconsistent and, indeed, unfair funding of one USP but not another.

Q.30: Competition criteria related to unfair burden

Q.30 Do respondents consider URCA’s competition criteria to be appropriate for assessing the issue of unfair burden? Are there other criteria that URCA should also consider?

RESPONSE:

CBL agrees that in assessing question of unfair burden, URCA should take into account competitive developments and their impacts on a USP and its ability to self-finance its USO. In particular, CBL agrees that the competitive criteria included in the Consultation Document in this respect – namely changes in prices over time, changes in market share and/or changes in related markets and market entry barriers – are relevant considerations.



Q.31: Separate USFs for each designated USP

Q.31 Do respondents agree with URCA’s proposal to establish separate USFs for each designated USP?

RESPONSE:

CBL sees no valid administrative reason or rationale for establishing separate USFs for each designated USP. CBL is not aware of any other jurisdiction that has created separate USFs for each designated USP. Creating separate USFs would add administrative burden and unnecessarily complicate the administration of the USF.

Q.32: Percentage contribution based on revenues

Q.32 Do respondents agree with URCA’s proposal to appropriate a percentage contribution that equates to a licensee contribution to the Total industry Total Relevant Revenues for the purposes of recovery of the net avoidable cost to the funding universal services, where Total Relevant Revenues for the calculation of contribution would exclude:

- **Revenues earned by the licensee for services other than those covered by their licence;**
and
- **Revenues earned by the licensee from operations outside of The Bahamas?**

RESPONSE:

As explained in detail in Section A.4, CBL considers that Government funding is the most efficient and practical manner to finance any USF requirement that may exist. CBL is opposed to the financing of the USF via mandatory sector contributions. Furthermore, CBL contends that no monies be appropriated by URCA until there is a proven need to do so. That is, until the net costs (including benefits and unfair burden if required) have been reviewed and approved. URCA has not clarified the timing of budgeting on payment. International experience suggests where monies are appropriated in advance, there is an imbalance against disbursement, i.e. more monies are appropriated than dispersed, thus making USO funding stranded.



If URCA nevertheless adopts a percent of revenue-based contribution charge, as described in this question, CBL agrees in general with the proposed approach. In addition, CBL suggests that inter-carrier payments incurred by a licensee (such as interconnection charges, leased facility charges, etc.) would also be deducted from Total Relevant Revenues. Without such a deduction there would be double counting of contribution-eligible revenues across licensees.

CBL submits that under this proposed approach, the established percent of revenue charge should be set to precisely recover any eligible net USO costs reviewed and approved by URCA, and no more. Any inadvertent surplus or deficit in the USF at the end of the annual administrative/management cycle should be cleared by reducing or increasing, respectively, the magnitude of the percent of revenue charge in the following period. The USF should not be used to accumulate funds for possible future USO funding requirements or transferred to the Government for other uses.

Finally, if a USF payment scheme were to be lawfully established, legislators and policy makers should not lose sight of the fact that any such scheme would need to be objective, non-discriminatory and fairly administered. This means that if CBL were to be subject to a contribution, its competitors (whether licensed or unlicensed) would need to be subject to the same obligations. It also means that to ensure that fairness prevails, URCA would need to step up its enforcement efforts and deal effectively with any unlicensed service provision in The Bahamas.

Q.33: Contribution exemptions for licensees less than B\$50,000

Q.33 Do respondents agree with URCA’s proposal to establish a minimum threshold that exempts a licensee from paying the universal service charge where Total Relevant Revenues is less than B\$50,000?

RESPONSE:

CBL does not agree that licensees with Total Relevant Revenues of less than B\$50,000 should be exempted from contributing to a USF.

If the number of licensees in the country were very large, an exemption from any required universal service charges could be warranted to save USF administrative costs. However, this is not the case in The Bahamas. Consequently, there is no apparent reason or need to exempt small licensees from a USO percent of revenue charge based on a minimum revenue threshold test, assuming such a charge were



introduced by URCA. The fact that such a test would have to be conducted to allow for the proposed exemption implies that all licensees would have to supply revenue information to URCA in order to qualify for the exemption. However, once in possession of each licensee's revenue information, URCA could just as easily levy the applicable universal charge as provide an exemption. Alternatively, a minimum USO contribution fee could be established as part of an exemption test for smaller licensees. The fee arrangements for USO should not be allowed to further tilt the regulatory playing field in favour of operators that are already exempt from Communications Fees, URCA licensing fees, and other charges imposed on CBL.

Q.34: Separate Accounts for USFs

Q.34 Do respondents agree with URCA's proposal to open separate Accounts for universal service and to have those Accounts audited and published annually?

RESPONSE:

As indicated in response to Q.31, CBL is opposed to the establishment of separate USFs for each USP. Consequently, CBL considers that only a single USF account should be established by URCA, assuming one is necessary. Any such USF account should be audited and published annually.

CBL reiterates its view that USF financing should only come from the Government via public funding.

For clarification purposes, CBL agrees that the USF should be separate to URCA's operating account but the USF should be one single account for all operators and sectors.

Q.35: Timing of request for USF compensation

Q.35 Do respondents agree with URCA's proposal that the administrative and management cycle of the USF follows the calendar year and that any request for funding be submitted to URCA on an annual basis, within one month of the publication of relevant audited separated accounts but no later than eleven months following the end of the USP's financial period?

RESPONSE:

CBL agrees that the administrative and management cycle of the USF follow the calendar year and that any request for funding be submitted to URCA on an annual basis within one month of the publication of



relevant audited separate accounts, but no later than 11 months following the end of the USP's financial period. However, at the same time, it should be recognized that the USO funding filing requirements under URCA's USO proposals are very detailed and extensive. Consequently flexibility in filing time frames will likely be necessary.

CBL reiterates its view that USF financing should only come from the Government via public funding.

Q.36: Sufficient information to be provided for USF compensation request

Q.36 Do respondents agree with URCA's proposal that the failure by an USP to provide sufficient robust information for URCA to be able to approve the USO costs submitted as part of its claim should result in the whole process being cancelled for that particular year?

RESPONSE:

The fact that the process is lengthy and that the quality and validity of information may be subject to debate should not result in an automatic cancellation of an application. URCA's proposed net USO cost estimation methodology and associated funding eligibility test requirements are onerous, complex and involve many subjective elements. Guidelines on specific filing requirements and USO costing methodologies will likely not be issued by URCA for some time. Similarly the nature of the process to review a USO funding application is unclear - including, for instance, opportunities for interested parties to comment on USO funding applications. Consequently, it is unclear what might constitute a failure to provide sufficiently robust information in support of a USO funding application at this juncture. Indeed, any initial USO funding applications that may be filed with URCA could take well over a year to process.

At the same time, it is clearly within URCA's power to deny an application for USO funding where it finds that an applicant failed to make a case for the existence of a USO funding requirement or that the applicant otherwise failed the associated eligibility tests for USO funding.

Q.37: Administration of contributions

Q.37 Do respondents agree with URCA's proposal that:

- **Contributor licensees be required to submit to URCA financial statement of the Total Relevant Revenues within four (4) months after the end of their financial year;**



- **URCA issue on or before 30 days of receiving those financial statements, invoices to contributor licensees specifying the quantum of their contribution to the relevant Funds; and;**
- **Contributor licensees be required to make the necessary payment before the expiration of 30 days to the relevant USF Account?**

RESPONSE:

It is unclear from the discussion in the Consultation Document on this question the precise basis on which URCA would issue invoices to contributor licensees, specifying the quantum of their contribution to the relevant USF(s). As noted, in CBL's view, invoices should only be issued after URCA had reviewed and approved the one or more USO funding requirements, including the precise value of any such USO funding requirement(s).

As well, CBL would suggest that in the event the total USO funding requirements were large, rather than a lump sum annual payment, the invoicing process should allow for quarterly or even monthly payment of the required fees as may be appropriate.

CBL reiterates its view that USF financing should only come from the Government via public funding.

In addition, CBL notes that the contemplated sequencing of any eligible USO funding requirement is unclear from the Consultation Document. It would appear, for instance, that if a USP filed an application for USO funding for the calendar year 2012, it could do so within one month of issuing its audited separated accounts for that same year – i.e., by July 2013 (six plus one month following the end of the calendar year). It appears that the review process for the application could take up to a year (at least for initial applications). Consequently, if approved, URCA would know the level of the 2012 USO funding requirement by roughly mid-2014. It could then collect contributing licensee eligible revenue data following the end of the 2014 fiscal year for contributing licensees – likely year-end 2014. However, that information would only be made fully available by April 2015 (as per the proposal in this question). Invoices would be then issued by May 2015. Presumably the USP would begin receiving funding from the USF shortly thereafter for its 2012 USO funding requirement, roughly three and a half years after the fact. CBL suggests that URCA clarify the contemplated USO funding process and time line in the event an request for funding is approved.



Q.38: Failure to make a contribution

Q.38 Do respondents agree with URCA’s proposal that the failure by a by a Contributor licensee to pay the required contribution on the due date should incur an annual interest rate of 3% above the prime lending rate, as notified by the Central Bank of The Bahamas, on all outstanding monies, until the full contributions is paid to the USF account?

RESPONSE:

Should a revenue-based USO fund contribution approach nevertheless be implemented by URCA, CBL is not opposed to this proposed penalty charge for late contribution payments.

CBL reiterates its view that USF financing should only come from the Government via public funding.

Q.39: Administrative and management costs of USF

Q.39 Do respondents agree with URCA’s proposal that the administrative and management costs be recouped through the contribution to the USF?

RESPONSE:

CBL submits that the costs of the administration and management of the proposed USO regime and, if necessary, the related USF should form part of URCA’s ongoing operating budget. URCA already charges licensees annual regulatory fees to recover its operating costs. In CBL’s view, there is no need nor rationale for introducing a new, separate fee associated with the URCA’s USO-related activities.

CBL reiterates its view that USF financing should only come from the Government via public funding.

Q.40: Definition of “Market-Based”

Q.40 Do respondents agree with URCA’s proposed working definition of Market-Based?

Q.41: Consideration of various funding options

Q.41 Do respondents agree that URCA proposal to consider a various funding options inclusive of



pure market-based, a mix of funding (market and USF) or pure Fund based funding?

RESPONSE:

CBL respectfully submits that URCA’s proposal to clarify and define the meaning of “market-based” is one of many instances wherein URCA is attempting to “clarify” or “address ambiguities” in the face of significant conflicts, lacunae and ambiguities that pervade the USO interim provisions of the Comms Act.

In particular, the proposed definition is so vague and general that it further adds confusion rather than provides clarification.

The feasibility of various funding approaches should be considered much earlier in the process, but market based approaches are better suited for network build rather than maintenance. URCA makes no distinction in its proposals of how and when market based or mixed funding may be used in The Bahamas.

In particular, the concept of the pay or play mechanism appears inconsistent with the interim USO and USP designations discussed in the rest of the Consultation Document. For example, it is not clear to CBL, how a designated USP for a particular USO to provide service to all populated areas, would avail itself of any such market-based approaches. Or, would it be URCA that decides, on case-by-case basis, in which instance such market-based approaches may be used?

Does the pay or play mechanism mean for instance that a designated USP can contract out the provision of service for a particular island for which that USP is responsible to a third-party by paying that third-party a certain amount of subsidy? Would such an arrangement have to be approved by URCA? And how would the associated net cost be evaluated? What are URCA’s proposals to calculate the net USO costs? Presumably, the USO would still be eligible for compensation from the USF, either to the originally designated USP or to the third-party who is actually implementing the USO. If this is the case and the financing is still coming from the USF, CBL is unclear why URCA refers to this as pure market-based.

CBL is familiar with auctioning the provision of the USO and its funding to specific regions or islands. As described in Section A.3, this is perhaps the most common approach to the implementation of universal service around the world in relation to network expansion. While of course there is a market component to this approach, inasmuch as the project is “auctioned”, it is important to stress that the



financing of the project is the responsibility of the USP.

In summary, CBL is of the view that the pay or play mechanism as briefly described in the Consultation Document requires significantly more development before CBL can comment on it.

Q.42: Treatment of confidential information

Q.42 Do respondents agree with URCA’s proposal that the USPs be required to demonstrate that the disclosure of information specific to its USO, can cause competitive harm as a condition for URCA to treat the information as confidential?

RESPONSE:

CBL agrees with URCA’s proposal in this respect.

Q.43: Establishment of a “confidentiality ring”

Q.43 Do respondents consider that URCA should establish a “confidentiality ring” and if so, who should URCA consider as appropriate to be part of that “ring”?

RESPONSE:

If all or most USO costing information filed with URCA is kept confidential, then at a minimum a “confidentiality ring” should be created. The ring should include representatives from each USF contributor, and the information disclosed should be subject to NDAs signed by a limited group of individuals with each organisation on a “need to know” basis.

