



cablebahamas

**Draft Policy for New Spectrum Bands
700 MHz, 12 GHz and 42 GHz
ECS 1/2012**

**Submitted to the
Utilities Regulation and Competition Authority**

February 20, 2012

**by
Cable Bahamas Ltd.**

Cable Bahamas Ltd., Caribbean Crossings Ltd. and Systems Resource Group Limited (hereinafter, "CBL") hereby respond to the public consultation document Draft Policy for New Spectrum Bands – 700 MHz, 11 GHz, 12GHz and 42 GHz: ECS 1/2012 issued by URCA on 16th January, 2012.

Executive Summary

We are supportive of URCA's intentions to award spectrum as soon as practicable and best practices suggests:

Some measures to reduce the risk of anti-competitive behaviour in spectrum markets are within the province of spectrum policy itself. Anti-competitive trades can occur only when spectrum of a particular use is scarce. As much spectrum as possible should be placed in the market, without technology or service restrictions. Any such restrictions on spectrum currently in use should be removed. Operating licenses for particular services should not be tied to specific spectrum frequencies. More generally, policies that encourage widespread competition in downstream services reduce the incentives for anti-competitive behaviour in the spectrum market.¹

However, the continuing imposition of an unconstitutional monopoly on cellular telephony means that the electronic communications market is faced with idiosyncrasies that the modern world has left behind. We have considered URCA's proposed policy and based on the current restrictions being placed on the allocation of bands of the 700MHz coupled with the imposition of the burdens it is our view that the opening of the 700 MHz should be postponed until all operators can be treated equally. We can only support the opening of the 700 MHz if there are significant amendments and principally BTC is ineligible for an award in this band. The Electronic Sector Policy and the Communications Act profess competition, but its fulfilment is thwarted by protectionism and the effect becomes very evident in the current consultation. URCA is implored to adopt measures that are pro-competitive behaviour. Statistics show that mobile subscribers since 2002 have overtaken fixed line subscribers and the trend is predicted to continue². Therefore there is an exponential advantage of a mobile operator over a fixed wireless operator in terms of economies of scope and scale and market appeal.

We express concerns and reservations about the proposed allocation of the 700 MHz to BTC given its monopoly in cellular mobile. We believe the monopoly is unconstitutional and has no place in modern society and URCA's policy should be to ensure a level playing field amongst operators.

INTRODUCTION

CBL sees access to spectrum as a real and viable means of bringing innovative wireless products and services to the electronic communications market in the Bahamas at reasonable and competitive prices. Spectrum is an indispensable element in a diverse range of applications including broadcasting and mobile communications. URCA should be focused on maximizing technical and economic efficiency. This focus operates in a unique environment and it would be in the public interest that competitive opportunities and restraints be equalized across all operators. In terms of spectrum suitable for mobile communications, BTC has spectrum in the 850 MHz, 1900 MHz and in the 2.5 MHz. It seems contrary to the objectives of the Electronic Communications policy to allow BTC to have a further allocation of spectrum in the 700 MHz range. It further seems discriminatory for URCA to give BTC first and only

¹ Bjorn Wellenius and Isabel Neto "Managing the Radio Spectrum," p.31

² Background Paper - Radio Spectrum Management for a Converged World – ITU16 – 18 February 2004

preference to certain blocks of the spectrum at this time. URCA can execute its mandate to encourage, promote and enforce sustainable competition by declaring BTC ineligible for an allotment of spectrum in the 700 MHz range until 2 years after the award of the next cellular licence. The proposed draft policy on the 700 MHz unduly benefits BTC by giving it a further head start in the cellular voice market. The policy as crafted:

1. reserving certain blocks for mobile service licences;
2. giving BTC the first choice on which two blocks of the reserve it desires;
3. requiring national rollout; and
4. pricing the 'mobile services' block with no real approximation of the opportunity cost

gives the impression that the opening of spectrum in the new band is principally done to advantage BTC. The disadvantage to competitors arises or persists as a consequence of a situation in which BTC's competitors will have access to much smaller spectrum resources for their deployment of mobile broadband network, a deficiency which may be reasonably difficult to overcome no matter how great the competitor's capability is in other critical aspects of the business.

The present draft policy makes the 700 MHz only marginally of interest to most licensees. Alternatively, it is our suggestion that the opening of the 700 MHz be deferred until there is a level playing field for all licensees.

RESPONSES TO QUESTIONS

Consultation Question #1:

Do you agree with URCA's proposals for interim pricing of newly opened standard spectrum bands? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

URCA has indicated that it intends to review some of the wider spectrum policy issues that will impact demand, efficiency of use, and value of spectrum licensed in the Bahamas. We hope that prior to the Review, URCA will collect data from the industry so as to diminish reliance on anecdotal evidence when preparing the consultation document. URCA has described the proposed pricing for the newly opened bands as interim; we will like clarification that this does not mean that when the Review is completed, that the price for the newly opened bands will be adjusted retroactively. We disagree with any retroactive adjustment. We do not agree with URCA's interim pricing proposal as it relates to licence fees for the 700 MHz. Notwithstanding our objection to BTC being allocated any blocks in the 700MHz at this time, the price differentiation between the blocks to be assigned to mobile services licensees only and to mobile services restricted does not adequately reflect the opportunity costs. The interim price of the spectrum for the restricted mobile services band should be the same as the spectrum fee for other restricted mobile bands that are currently open. There should be a lower price for bands in the Family Islands.

We suggest that the blocks allocated for restricted mobile services are priced at \$800 per MHz for New Providence and the following discounts: 40% for Grand Bahama, 12.5% for Abaco and 8% for remaining Family Islands. The value of this spectrum is the same as other fixed wireless spectrum and there should be no premium for the cellular mobile factor until other providers can provide these services.

Consultation Question #2:

Do you agree with URCA's approach to the geographical categories for licensing of newly opened spectrum bands? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

URCA's approach to geographical licensing in the newly opened bands up to 3.4 GHz should be practical and based on the convenience to operators rather than challenges that URCA faces. Spectrum pricing should be reflective of the value of that spectrum to the market. It does not seem plausible to charge the same for spectrum in New Providence where there is demand as in the Family Islands. URCA is supposed to be adhering to market and competition principles. The pricing of the spectrum can act as an incentive or disincentive for investment in the Family Islands. Furthermore, it has to be borne in mind that backhaul requirements and access to infrastructure in the Family Islands pose additional technical and financial costs. Structuring the market as URCA proposes, is not conducive to entry into the market and benefits BTC who has sunk cost in infrastructure for backhaul and sites. It seems that URCA's concern about 'cherry picking' is addressed through universal service obligations. The ECS policy is not supported by URCA's proposal for issuing national licenses in the newly opened bands up to 3.4 GHz. For example, the 700 MHz is known for its superior propagation characteristics for the economics of network deployment however URCA's proposal will obviate these economics. The requirement for a national licence for spectrum in a restricted mobile services block is particularly unattractive since there appears no viable business case to recover the cost of a family island build.

Consultation Question #3:

Do you agree with URCA's proposals for licensing the 700 MHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

Allocation

URCA's proposal for licensing the 700 MHz band gives an unfair advantage to BTC. BTC is already protected in the cellular mobile market and the earliest realistic opportunity for competition is 2016. BTC already has spectrum (assigned for mobile services) in the 800 MHz, and 1900 MHz. It is unfair that BTC is now given preferential treatment for another swathe of spectrum. BTC's network and services ubiquity makes it costly for other operators to construct networks and/or deploy services. BTC should not be given any further advantage than they currently enjoy. BTC has already announced the deployment of '4G' services and therefore, there is no compelling reason why BTC's with allocations in the 800 MHz, and 1900 MHz **should be given more frequency** . In terms of roaming convenience for tourists, considering the coverage of Verizon Wireless and AT&T networks in the United States, it makes the likelihood of a significant number of U.S. tourists visiting the Bahamas wanting to use their 4G cellphones so infinitesimal that the corresponding competitive harm outweighs this convenience.

There is also the question of interoperability of the cellular phones in the frequencies that have been assigned to BTC.

There exists precedent for prohibiting incumbent operators from participating in the allocation of spectrum. In the United States, the spectrum cap was introduced in 1994³ and restricted the

³ FCC docket no. 99-244

concentration of broadband frequencies assigned to certain services. The aim was to promote competition in these markets. The spectrum cap was different for metropolitan areas and rural areas. The rules were reviewed regularly until it was determined that the markets were competitive at which time they ended. We believe this precedent could be useful given the protectionism afforded to BTC. To mitigate the deleterious effect on competition that BTC's monopoly poses, URCA should make BTC ineligible for spectrum in the 700 MHz until 2 years after the award of the cellular mobile licence. It is a means to level the playing field for operators.

It is also available to URCA to vary the degree to which a firm is eligible for new spectrum. In determining the eligibility of an operator to obtain new spectrum, URCA can consider the amount of spectrum already allocated to a firm, the size of its operations and future plans. In BTC's Expression of Interests, it indicated plans to use it for 4G/LTE. BTC at the end of 2011 announced the launch of 4G. It would seem that BTC ought not be eligible to participate in the 700 MHz since it plans for 4G have been achieved with spectrum already assigned to it.

If URCA rejects the proposal to make BTC ineligible for an allocation in the 700 MHz band, then CBL suggests that the opening of this band is deferred until the end of BTC's monopoly. The proposed 'caste' system for this band seems to be contrary to the principles of competition, non-discrimination and international best practices.

Licence Terms and Conditions

The licensing of the spectrum on a national basis only seems to be contrary to the initiative to reduce barriers to entry and encourage competition.

With its cost advantages and its ability for rapid deployment, wireless access for telephony and data services has also conquered new markets. Wireless networks are fast becoming the preferred infrastructure solution for developing countries and rural areas where fixed line communications have been found to be too costly to deploy⁴.

The attractiveness of the 700 MHz (as with all bands in the lower frequencies) is that there are considerable cost savings available in terms of infrastructure deployment. It therefore seems axiomatic for URCA to insist on national licensing thereby diminishing a new entrants opportunity.

- **Requirement to put spectrum into active commercial use within 18 months of grant of licence.** 18 months seem aggressive given that there are no requirements for infrastructure sharing and the infrastructure will have to be imported and the likelihood of needing access to public lands.
- **Roll-out schedule** – Overall we believe the schedule is too aggressive and not reasonably achievable given the absence of requirements for infrastructure sharing and the need to import materials. The schedule has to bear in mind that for the Family Islands, most entrants (other than BTC) will need access to public lands, will need access to backhaul facilities and towers and thus will face a bottleneck. Until these regulatory measures have been put in place, any roll-out schedule is dubious. The roll-out schedule has to be reasonable and bear in mind the state of the national economy. The disadvantage of URCA's proposal is that it is likely to reward inefficiencies and unwarranted investments which then translate into either higher cost. This can have ramifications on retail pricing mechanisms. We believe that the pricing of the spectrum should be the real incentive which will result in the roll-out of services. In a monopoly market, roll-out requirements

⁴ Background Paper - ibid

are necessary, since an incumbent may see incentive in delaying roll out into new areas or of new service or products because it may cannibalize similar or existing services or products. However, a new entrant is likely to have an incentive to aggressively market any new product or services propelled by the need to make a return on investment. Allocating spectrum on an island by island basis assists operators in monitoring costs and return on investments. Furthermore for restricted mobile services awards, we do not think there should be any roll-out schedule. In the event that URCA determines that national licensing is appropriate then the roll-out plan has to be reasonable. Build out over 5 years would seem reasonable for New Providence, Grand Bahama and Abaco.

“URCA proposes that the Licensee be required to roll out commercial electronic communications services using the spectrum to communities...” We will be grateful for an explanation of the term ‘commercial electronic communications services’.

○ **Selection Process**

It is CBL’s position that BTC not be eligible for an award of the 700 MHz until 2 years after the award of the cellular licence. In the absence of this, the process should be deferred. If URCA is minded to go ahead with opening the 700 MHz band then all allocations in the 700 MHz should be for mobile restricted services (regardless of the licensee’s entitlement).

○ **Licence Fees**

The interim price of the spectrum for the restricted mobile services band should be the same as the spectrum fee for other restricted mobile bands that are currently open. There should be a lower price for bands in the family island.

URCA has described the proposed pricing for the newly opened bands as interim, we will like clarification that this does not mean that when the Review is completed, that the price for the newly opened bands will be adjusted retroactively. We disagree with any retroactive adjustment.

Consultation Question #4:

Do you agree with URCA’s proposals for packaging, pricing and licensing the 11 GHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

Consultation Question #5:

Do you agree with URCA’s proposals for packaging, pricing and licensing the 12 GHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

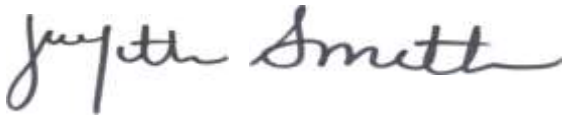
Consultation Question #6:

Do you agree with URCA’s proposals for packaging, pricing and licensing the 42 GHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

Conclusion

We express concerns and reservations about the proposed allocation of the 700 MHz to BTC given its monopoly in cellular mobile. The existence of a legal monopoly in the cellular mobile market makes the award of spectrum in the 700 MHz a difficult proposition. Examples of ECTEL and Trinidad and Tobago and other nations are not easily superimposed in the context of the Bahamian electronic communications sector. The present draft policy makes the 700 MHz only marginally of interest to most licensees. Alternatively, it is our suggestion that the opening of the 700 MHz be deferred until there is a level playing field for all licensees.

Respectfully submitted

A handwritten signature in cursive script that reads "Judith Smith". The ink is dark and the signature is fluid and legible.

Judith Smith
Legal Counsel

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