

Public Consultation on Retail Pricing Regulation in the Communications Sector

*Issued by the Committee for the Privatisation of The Bahamas
Telecommunications Company Ltd on behalf of The Government of
The Commonwealth of The Bahamas*

**Response of
Cable Bahamas Limited (“CBL”)**

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1.0 Introduction

Cable Bahamas Limited (“CBL”) hereby responds to the Public Consultation on Retail Pricing Regulation in the Communications Sector (the “Consultation Document”) published 17 June 2009 by the Committee for the Privatisation of The Bahamas Telecommunications Company Ltd. (the “Committee”) on behalf of The Government of The Commonwealth of The Bahamas (the “Government”).

CBL applauds the Government's commitment to (i) improve the communication services used by citizens and consumers in The Bahamas and (ii) to encourage and safeguard future investment in the sector and in The Bahamas as a whole. CBL respectfully submits, however, that some of the specific proposals included in the Consultation Document may undermine these objectives and potentially jeopardize future investment in the communications sector, specifically in the case of pay TV services and high-speed data services and connectivity.

CBL's response to the Consultation Document consists of two sections. The first sets out the main themes that CBL believes are particularly relevant to the issues raised in the Consultation Document as they pertain to pay TV services and high-speed data services and connectivity. The second section provides CBL's response to each of the 22 specific Consultation Questions, referring back to the themes outlined in the first section where relevant.

2.0 Main Themes of CBL's Response

At the outset, CBL notes that the scope of the Consultation Document is very broad in nature. Its objective is to consider proposals relating to the regulation of retail prices for communications services in The Bahamas, including (i) fixed voice telephony (including domestic and international calling), (ii) high-speed data services and connectivity (including Internet access services), (iii) mobile voice and data services and (iv) pay TV services. In CBL's view, while these services all fall within the communications sector, each represents a separate and distinct relevant product/service market. Consequently, in each case, a separate assessment must be conducted with respect to determining (i) the need for retail price or “economic” regulation, if any, and (ii) where retail price regulation is deemed necessary, the nature and extent of such regulation that should be adopted in view of current and expected market conditions unique to each relevant market.

CBL has a number of serious concerns with the proposals included in the Consultation Document, specifically as they relate to pay TV services and high-speed data services and connectivity.

First, in CBL's view, many if not all of the proposals included in the Consultation Document are based on traditional retail price regulation that typically apply to fixed line telephony services. However, in CBL's opinion, regulatory approaches that may apply in the case of fixed line telephony services should not necessarily be imposed on other communications services. As explained below, pay TV services differ significantly from fixed line telephony services and

therefore should be treated differently as well. Similarly, the rapidly changing and highly competitive high-speed data services and connectivity market also differs significantly from the fixed line telephony services market and thus should also be treated differently.

Second, retail price regulation and other forms of ex-ante regulation are normally only applied in a defined relevant market where significant market power (“SMP”) is found to exist, although even in such cases there still may be no requirement for regulation (as in the case, for instance, of discretionary products or services).¹ CBL is concerned that the “presumption” of SMP in the specific case of pay TV and high-speed data services and connectivity, which underpins the Consultation Document, is unfounded.² Thus, when the market conditions are properly taken into account (see below), in CBL’s submission, all forms of ex-ante regulation, including retail price regulation of these specific services, are largely, if not entirely, unnecessary and unwarranted.

Third, the Consultation Document appears to justify the need for retail price regulation of all segments of the Bahamian communications sector on the basis of the “high level” international retail price benchmarking exercise conducted by the Committee’s Advisors. CBL believes that this benchmarking exercise, specifically in the case of pay TV and high-speed data services and connectivity, is flawed and does not provide a valid basis for regulating either CBL’s pay TV service or its high-speed data services and connectivity. Indeed, as explained below, a more comprehensive and balanced benchmarking analysis supports the conclusion that CBL’s prices are generally below comparable prices in other countries in the Caribbean.

Fourth, while CBL believes that retail price regulation is unnecessary in the case of both pay TV services and high-speed data services and connectivity, to the extent that it is nevertheless concluded that CBL’s pay TV services and/or high-speed data services and connectivity should be price regulated, then CBL submits that any such price regulation should be narrowly focussed (i.e., apply only to “basic” services) and that the form of price regulation be light-handed nature. Indeed, in this respect, CBL submits that the Guidelines for Regulation and Government measures set out in Section 5 of the Communications Bill, 2009, provide the proper framework for determining and assessing the appropriateness of such retail price regulation or other regulatory obligations.

Fifth, CBL notes that, to date, there has been no clearly defined or properly functioning price review mechanism in the case of basic pay TV services. As a result, the price for CBL’s basic cable (pay TV) service has now been literally frozen at \$30 for the last fifteen years. To the extent that price regulation of CBL’s basic cable TV service price is maintained (or any other CBL pay TV services becomes price regulated), CBL submits that a clearly defined price adjustment or review mechanism must be put in place immediately as part of the Interim Pricing Framework set out in the Consultation Document. Maintaining CBL’s basic cable (pay TV) service price at \$30 going forward is simply unsustainable without jeopardizing service quality.

¹ In others words, SMP is a necessary, but not sufficient condition to impose price regulation or, more generally, economic regulation.

² The “presumed” finding of SMP is included in the Communications Bill, 2009, Section 116, and quoted in paragraph 10 of the Retail Pricing Regulation Consultation.

Each of these issues and concerns is addressed in more detail in what follows:

2.1 Regulatory measures should take into account the specific and different nature of the cable TV and high-speed data services

As noted, in CBL’s view, many of the proposals set out in the Consultation Document appear to be based on international practices typically applied to fixed line telephony services. However, the nature of and market conditions associated with the provision of pay TV services and high-speed data services and connectivity differ significantly. Regulatory approaches that may be suitable for fixed line telephony should not, in CBL’s opinion, be blindly applied to other communications services. Doing so could have significant negative effects on investment and innovation.

For instance, there are many fundamental differences between fixed line telephony and cable-based pay TV services. Some key differences are noted in Table 1 below.

Table 1: Key Differences between Telephony and Cable TV Services		
Service Characteristics	Fixed Line Telephony	Cable (Pay TV) services
Nature	Essential public service	Discretionary entertainment service
Price	Access typically priced below cost to promote affordability.	Normally priced on a cost recovery basis.
Additional Services Features	International calling and local features priced above cost to subsidize access	Higher tier service packages priced on cost recovery basis
Technology	Copper/fibre. Two-way connectivity	Hybrid fibre/coax. Traditionally one-way connectivity
Key Service Costs	Network access and traffic provisioning	Network access and capacity, plus program content
Economic Regulation	Traditionally rate base, rate of return, and more recently price cap regulation	Traditionally limited regulation focussed on “basic” service tier; but now largely deregulated with advent of satellite TV IP-TV services
Social Regulation	Emergency calling, message relay for disabled, lifeline services	Cultural policy-based requirements, such as channel “must carry” obligations
Universal Service	Subsidization of below-cost connections via regulatory provisions and /or establishment of universal service funds.	Universality rarely promoted.
Form(s) of Regulation	Initially, various forms of ex-ante regulation on SMP operators, with gradual and increasing reliance of ex-post controls once markets become effectively competitive	Initially, very limited ex-ante regulation on SMP operators, with relatively quick transition to only ex-post controls

With respect to the Consultation Document, perhaps the key differentiating factor noted in Table 1 is the fact that cable TV services have traditionally been ex-ante regulated in a more light-handed manner than telephony services. Price regulation, where applied, has typically been focussed solely on “basic” cable TV service, whereas “premium” tier services have typically not been subject to price regulation. This is the approach followed in The Bahamas today.

However, with the advent of Direct-to-Home (“DTH”) satellite TV services and, much more recently, Internet Protocol (“IP”)-based TV services provided over Digital Subscriber Lines (“DSL”), basic cable TV services are no longer subject to price regulation in most countries. For instance, according to a decade old OECD report, cable TV services in most OECD countries have not been regulated for years.³ Exceptions in the OECD report included the U.S. and Canada. However, in both of these instances, basic cable TV prices have since largely been deregulated as DTH satellite TV services were launched and gained market share. Thus, international best practice suggests that limited price regulation, if any, is required in the case of cable (pay TV) services.

High-speed data services and connectivity are also very different from fixed line telephony services; consequently, they too should be viewed differently in terms of potential regulatory treatment. High-speed data services and connectivity, including broadband Internet services, are a relatively new relevant market in the communications sector, one which is growing and changing rapidly.⁴ Compared to circuit-switched technology, the advent of and rapid development of digital/IP-based technologies has spurred revolutionary changes in the communications sector.

In CBL’s view, key considerations to bear in mind when considering the high-speed data services and connectivity, including broadband Internet services, include the following:

- High-speed data and broadband Internet services are constantly evolving and improving in terms of transmission speed and services features as a result of rapid technological change.
- Massive investments are required to roll out IP-based next generation network capabilities:
 - Over the last five years, CBL has invested over \$40 million in upgrading its cable network and other network facilities to provide improved broadband Internet access services to consumers and business customers, and
 - The Bahamas Telecommunications Company (“BTC”) has announced a \$50 million IP-based Next Generation Network investment program to be completed over the next 18 months.⁵
- BTC is effectively the “market incumbent” in the data services market in The Bahamas. CBL is a “market entrant”, having first offered broadband Internet services to consumers in 1999 and high-speed data services to businesses in 2002.

³ See OECD, Current Status of Communication Infrastructure Regulation: Cable Television, 1996, which shows that cable TV prices in only 5 out of the 24 OECD countries surveyed were specifically regulated by government at the time (well over a decade ago). See <http://www.oecd.org/dataoecd/11/54/2091503.pdf>.

⁴ CBL provides, in addition broadband Internet services, private lines, ranging from T1 through OC48, using IP-over-fiber optic infrastructure, among other data services.

⁵ N. Hartnell, *BTC’s \$50m core network in place in ‘18 months’*, Tribune, 15 July 2009, page 1B.

- There are a number other competitors in the market today or potential competitors poised to enter the market in the near term using both wireline and wireless technologies, as discussed in the next section.
- Retail regulation of high-speed data and broadband Internet services is increasingly rare around the world, especially where there are two facilities-based service providers in the market.

CBL notes that its high-speed data services and connectivity, including its broadband Internet services are not currently subject to price regulation. This approach adopted in The Bahamas is consistent with that generally followed in many countries around the world, and, in CBL's submission, should be maintained.

2.2 No Evidence of SMP in the case of Cable (Pay) TV and High-Speed Data Services

Following from Section 116 the Communications Bill, 2009, the proposals set out in the Consultation Document are seemingly premised on the "presumption" that CBL possesses SMP in the provision of both pay TV services and high-speed data services and connectivity. While the basis for this "presumption" is not an issue on which the Consultation Document seeks comments, the nature of any price regulation that may be applied to either CBL's pay TV services or high-speed data services as a result of this Consultation Document cannot be fairly and properly considered in the absence of an assessment of the extent to which CBL possesses SMP, if at all, in the provision of these services. The two issues are inextricably linked.

In CBL's submission, there is compelling evidence that it does not possess SMP with respect to the provision of either pay TV service or high-speed data services and connectivity.

2.2.1 Pay TV Services

CBL currently has a total of roughly 74,000 cable (pay TV) subscribers. Over the last five years, the total number of CBL's cable (pay TV) subscribers has increased by 17.5% (i.e., up from up from roughly 63,000 in 2004). These figures include CBL cable (pay TV) subscribers with only basic services as well as those with basic and premium tier cable (pay TV) services.

DTH Satellite pay TV services are not licensed to operate in The Bahamas, but are nevertheless a commonly used competitive alternative to cable (pay TV) services. CBL estimates that there are currently in the order of 20,000 of DTH TV service users in The Bahamas today. Moreover, CBL estimates that this total has doubled over the last 5 years (i.e., up from roughly 10,000 in 2004).

Thus, DTH Satellite TV services currently account for just over 21% of the broadcast distribution services market in The Bahamas. DTH Satellite TV is an effective competitive alternative to cable-based pay TV services and, as such, serves to discipline CBL's cable-based pay TV service prices.

Market share losses to DTH Satellite TV of this magnitude in other countries, for instance in

both the U.S. and Canada, have resulted in the lifting of ex-ante price regulation of basic cable TV services. For instance, in 1997, the Canadian regulator determined that once a cable TV company demonstrated that it had lost 5% or more of its subscribers to a DTH satellite TV service provider, its cable TV prices would be immediately deregulated.⁶ As of 2007, DTH satellite accounted for 24% of subscribers in Canada, and cable TV prices have generally no longer regulated in the country for years.⁷ CBL believes that there is justification to do the same in its case given the significance of DTH satellite TV penetration in the Bahamian market.

On the other hand, premium tier cable TV services have not been regulated in The Bahamas to date, nor are they typically regulated in other countries. Again, DTH satellite TV provides a digital competitive alternative to CBL's premium tier digital cable-based TV services. Moreover, premium tier cable TV services are purely "discretionary" entertainment services. There is no valid reason to apply ex-ante price regulation to such services, even if one concluded that CBL possesses SMP with respect to their provision (a position with which CBL disagrees).

2.2.2 High-Speed Data Services

The high-speed data services category encompasses a range of services including (i) residential market segment broadband Internet services (such as CBL's CoralWave services) and (ii) business market segment high-speed data services, including national and international data circuits and broadband Internet access. Both of these markets are highly competitive.

2.2.2.1 Residential Broadband Internet Access

CBL provides a range of broadband Internet services to consumers under the CoralWave brand name. CBL currently has roughly 39,000 subscribers to these services, up from 20,000 in 2004 (a 95% increase over five years).

CBL's main competitor in this market is BTC who provides a similar range of broadband Internet services using DSL technology under the I-Connect brand name. BTC currently has in the order of 18,500 DSL subscribers, up from 11,000 in 2004 (a total increase of almost 70%).⁸ BTC has recently announced a \$50 million capital investment plan aimed at upgrading its IP next generation infrastructure which is used to provide broadband Internet services.⁹ Service quality upgrades from this investment will provide a basis for BTC to increase its customer base and potentially its market share.

Thus, BTC's market share is in the order of 30% of consumer broadband Internet services market.

More importantly, with CBL and BTC, The Bahamas has facilities-based competitors

⁶ Public Notice CRTC-1997-150, *Broadcasting Distribution Regulations*, 22 December 1997.

⁷ CRTC, *Communications Monitoring Report*, July 2008. In the case of the U.S., as of mid-2006, DTH accounted for roughly 29% of the multi-channel video programming distributor market in the U.S. See, respectively, FCC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 13th Annual Report, released 16 January 2009, and CRTC, *Communications Monitoring Report*, July 2008.

⁸ N. Hartnell, op cit, and BTC's 2004 Annual Report. Note that these figures likely include both residential and business subscribers.

⁹ N. Hartnell, op cit.

with coverage throughout most of the country. In many other countries where two-facilities based competitors are present in the broadband Internet services market, such as the U.S. and Canada, neither facilities-based service provider has been found to possess SMP and, accordingly, ex-ante price regulation has either never been imposed, or if initially imposed, has been subsequently lifted. The same should apply in The Bahamas.

There are additional competitive broadband Internet service alternatives available to consumers as well, including satellite, broadband mobile wireless (available from BTC) and fixed wireless services. A list of some of the alternatives is provided further below.

2.2.2.2 Business High-Speed Data and Broadband Internet Services

In the case of business high speed data and broadband Internet services, it is important to bear in mind that CBL is not the market “incumbent” but rather a competitive “entrant”. It is BTC that is the incumbent, national telecommunications service provider. Where required, regulation is normally focussed on monopoly or former-monopoly service providers, due to the fact they either possess a monopoly and therefore SMP (pre-market-liberalization) or they continue to benefit from their position of incumbency and therefore SMP (post-market-liberalization). When markets are liberalized (i.e., opened to competition), regulators have not been known to single out an entrant for the purpose of apply price regulation. If the incumbent’s dominance is found to have been eroded by competition, then the market should be deregulated. In CBL’s view, it is not appropriate to simply determine which competitor has the largest market share and then apply price regulation to that competitor. Doing so would only serve to undermine market forces, resulting in inefficiencies and reduced investment and innovation incentives.

As of 2006 (the last year for which BTC published an annual report), BTC’s Internet and other service revenues (the latter of which include BTC’s data service revenues), were just over \$17 million.¹⁰ In that same year, CBL’s Internet service revenues (which include CBL’s data service revenues) were just under \$20 million.¹¹ While there are no doubt differences in the inclusions in these high-speed data and Internet service revenue totals, the fact remains that both BTC and CBL are similar in scale in these markets. Consequently, one would expect that neither company possesses SMP (or, conversely, if one is presumed to possess SMP and price regulated, then the other should be treated no differently).

Once again, in other countries where two facilities-based competitors are present in the market for high-speed data services, each with significant market coverage, neither service provider has been found to possess SMP, and accordingly, ex-ante price regulation has either never been imposed, or if initially imposed, has been subsequently lifted. The same should apply in The Bahamas.

Further still, in The Bahamas today there is also a growing number of competitive alternatives in the business market segment. These competitors also typically provide or

¹⁰ See BTC’s 2006 Annual Report.

¹¹ See CBL’s 2006 Annual Report.

can provide broadband Internet services to the consumer market segment as well. A non-exhaustive list of high-speed data and broadband Internet service competitors is provided in Table 2 below.¹²

Company	Website	Technology	Market(s)	Coverage
BTC	btcbahamas.com	Copper/fiber	Res/Bus	National
CBL	cablebahamas.com	Cable/fiber	Res/Bus	Abaco, New Providence, Grand Bahama & Eleuthera
DC Technology		DSL reseller	Bus	New Providence
IP Solutions Int'l	ipsi.tv	Wireless	Res/Bus	New Providence
Last Mile Communications	lastmilecoms.com	Wireless	Res/Bus	Abaco
Pro's Wireless		Wireless	Res/Bus	Nassau
SecureNet	securenetbahamas.com	Wireless	Res/Bus	New Providence
Satellite Bahamas	satellitebahamas.com	Satellite	Res/Bus	National
Systems Resource Group (IndiGO Networks)	indigonetworks.com	Wireless	Res/Bus	Abaco, New Providence & Grand Bahama

In sum, in CBL's submission, the market evidence clearly demonstrates that CBL does not possess SMP with respect to the provision of either pay TV services or high-speed data services and connectivity. Even if one nevertheless presumes that CBL possesses residual market power, it would not be sustainable in view of the rapid pace of technological change in these communications market sectors.

2.3 The benchmarking analysis in the Consultation Document is flawed and, in any event, does not provide a basis for retail price regulation of cable TV or high-speed data services

As noted, the Consultation Document appears to base its rationale for the maintenance and imposition of price regulation, at least in part, on the results of the "high-level" benchmarking exercise conducted for the Committee by its Advisors. The Consultation Document notes, for instance, that "existing retail prices in The Bahamas may generally be higher than prices of other similar countries" and then adds that "[t]he options for responding to concerns about price levels include increased competition and more formal regulation" and that "[p]rice regulation may also be necessary as a transitional step as competition develops".¹³ The concerns noted in the Consultation Document relating to "higher" prices in The Bahamas seemingly apply broadly across communications in The Bahamas as a whole.

CBL has serious concerns with the usefulness of high-level benchmarking exercise included with

¹² There are currently 20 licensed ISPs in the Bahamas according to the Public Utility Commission's website listing; see http://www.pucbahamas.gov.bs/telecoms_licenses_isp.php

¹³ Consultation Document, paragraphs 5 and 6, respectively.

the Consultation Document. For instance, the number of countries covered in the analysis is very limited (at four) and, more importantly, there are only two directly comparable Caribbean countries included in the analysis (Cayman Islands and Jamaica). No rationale is provided as to why the other two European countries (Malta and Guernsey) are “similar” to other Caribbean countries.

Even taking into account the puzzling selection of countries used in the benchmarking analysis, CBL notes that the service price evidence shown in Attachment 2 to the Consultation Document suggests, if anything, that its prices are fair and reasonable. First, the results indicate that CBL’s broadband Internet prices are at “levels similar to other countries.”¹⁴ Second, CBL’s prices compare favourably with two out of the three countries used as comparators in the analysis.

2.3.1 CBL Benchmarking Analysis Overview

CBL has conducted a more comprehensive and balanced benchmarking analysis for its basic cable TV and basic broadband Internet service. It includes more Caribbean countries, territories and jurisdictions (altogether “Countries”) which are “similar” to The Bahamas. As demonstrated below, the results of CBL’s benchmarking analysis supports the conclusion that CBL’s prices are generally much below the comparable prices in comparable Countries. The methodology used in CBL’s benchmarking analysis is presented in Annex A.

As set out in Annex, A, CBL has compiled publicly-available package and pricing and other data for a number of other Caribbean Countries. The other data includes Gross Domestic Product (“GDP”) per capita, population, surface area and population density (the “Socio-Economic Data”).

CBL considers that the usefulness of any benchmarking exercise depends on the relative sample size of the data points included in the analysis and the extent to which countries included in the sample are “similar”. No two countries are identical and hence there is some judgement as to what constitutes “similarity”. CBL believes that any concerns in this respect can be mitigated by the following measures, among others:

- Include a relatively large sample of countries to ensure that the results are more likely to be robust, rather than be overly influenced by one or more “outliers” within a relatively small sample. CBL believes that its benchmarking analysis meets this criteria and that the high-level benchmarking exercise included with the Consultation Document does not.
- Include countries that are relatively geographically close rather than countries that are geographically far. Such an approach is more likely to reflect any similarities related to operating conditions. CBL has selected only Caribbean island Countries for its benchmarking. This is in contrast to the high-level benchmarking exercise included with the Consultation Document, which included Malta and Guernsey. CBL notes, for instance, that companies operating in the Caribbean (in contrast to Malta and Guernsey) have to take into account the potential damage from hurricanes when planning their networks, and this may result in relatively higher cost structure.

¹⁴ Consultation Document, paragraph 17, 4th bullet.

- Most companies, including CBL, provide multiple cable TV and Internet packages / plans. CBL believes that comparability should be based on the key characteristics of the service. In this regard, CBL has used the number of video channels and the download speed as the key characteristic to select the “comparable service” from the packages available in other Countries for cable TV and broadband Internet, respectively. This is in contrast to the high-level benchmarking exercise included with the Consultation Document whereby, for cable TV services, the plan with the lowest number channels was selected as the comparable service. Such an approach, for instance for Malta-GO, results in the inappropriate selection of the “Free” package (with 17 channels and a price of \$3.14) as the “comparable service” instead of the, in CBL’s view, the more appropriate “Gold” package (with 54 channels and price of \$31.40).
- Ensure that the results are robust in relation to some of the main underlying cost and price determinants of the corresponding services. This is why CBL has included the Socio-Economic Data in its benchmarking analysis. One would expect, for instance, that the price of cable TV service and that of Internet service across countries would, on average, tend to increase with the GDP / capita of the countries. This is for a number of reasons, including that the labour component of networks would generally be higher in higher income countries because of the underlying cost of labour. The figures presented in Annex A indeed confirm that this relationship holds for the Countries included in the cable TV and the Internet samples. Equally important, the figures show that Bahamas is well below the trend line in all cases, confirming the robustness of the conclusion that CBL prices are lower than that of comparable services in comparable Countries.

2.3.2 Basic Cable TV Service

Table 3 presents the summary results of CBL’s benchmarking analysis for Basic Cable TV Service. This service corresponds to CBL’s SuperBASIC TV service that includes between 48 and 54 video channels (depending on the island) and has a monthly price of \$30.00. Table 3 presents the comparable prices for 12 other Caribbean Countries, as well as the corresponding per channel price.

The average monthly subscription price for comparable services in the other 12 Caribbean Countries surveyed (excluding Bahamas) is \$38.39, which is about 28% higher than CBL’s monthly price of \$30.00. Looking at the price per channel, the average (excluding Bahamas) is \$0.75, which is also about 28% higher than CBL’s per channel price of \$0.60. These results indicate the robustness of the conclusion that CBL’s prices are lower.

Further, the Socio-Economic Data also suggest that the conclusions are robust in this respect. Figures 1 and 2 in Annex A show that even when taking into account GDP per capita, Bahamas prices are lower than comparable prices. CBL also notes that Bahamas has the lowest population density of the sample Countries, which would suggest that, in comparison to other companies, it would be far less able to take advantages of economies of density. Further, CBL provides service in four islands – this is also a relative cost disadvantage in comparison to the single-island Countries in the sample. In spite of these relative population density and geographical disadvantages, CBL’s basic cable TV price is on average lower than the prices of comparable cable TV services in the other surveyed Caribbean Countries.

Table 3: Summary results of CBL benchmarking analysis for Basic Cable TV Service

Country	GDP/capita (USD,PPP)	Population	Surface Area (sq.km)	Population Density (pop / sq.km)	Monthly Fee for Basic Cable TV (USD)	Monthly Fee for Basic Cable TV / Channel (USD)
Aruba	\$21,800	100,899	180	561	\$32.77	\$0.78
Bahamas	\$19,844	331,140	13,880	24	\$30.00	\$0.60
Barbados	\$16,957	293,942	430	684	\$56.67	\$1.05
Bermuda	\$69,900	64,000	50	1280	\$45.00	\$0.96
British Virgin Islands	\$38,500	24,491	151	162	\$40.00	\$0.68
Cayman Islands	\$43,800	53,529	260	206	\$74.10	\$1.61
Dominican Republic	\$6,706	9,725,569	48,730	200	\$26.54	\$0.27
Grenada	\$7,344	105,668	340	311	\$18.73	\$0.59
Jamaica	\$6,079	2,675,800	10,990	243	\$9.96	\$0.17
Puerto Rico	\$18,300	3,943,229	8,950	441	\$39.42	\$0.74
St. Kitts and Nevis	\$14,480	48,790	260	188	\$28.88	\$0.50
Trinidad and Tobago	\$23,507	1,333,050	5,130	260	\$39.12	\$0.91
Virgin Islands (U.S.)	\$14,500	108,448	350	310	\$49.44	\$0.95
Average (inc. Bahamas)	\$23,209	1,446,812	6,900	374	\$37.74	\$0.75
Average (exc. Bahamas)	\$23,489	1,539,785	6,318	404	\$38.39	\$0.77

2.3.3 Basic Broadband Internet Service

Table 4 presents the summary results of CBL’s benchmarking analysis for basic broadband Internet service. CBL proposes that this service correspond to CBL’s CoralWave Jazz service that has a download speed of 1500 kb/s and an upload speed of 256 kb/s and has a monthly price of \$21.70. Table 4 presents the comparable prices for 16 other Caribbean Countries, as well as the corresponding per kb/s price.

The average monthly subscription price for comparable services in the other 17 Caribbean Countries surveyed (excluding Bahamas) is \$47.33, which is about 118% higher than CBL’s monthly price of \$21.70. Looking that the price per kb/s, the average (excluding Bahamas) is \$0.039, which is about 178% higher than CBL’s per channel price of \$0.014. These results indicate the robustness of the conclusion that CBL’s prices are lower.

Further, the Socio-Economic Data also suggests that the conclusions are robust in this respect. Figures 3 and 4 in Annex A show that even when taking into account GDP per capita, Bahamas prices are lower than comparable prices. CBL also notes that Bahamas has the lowest population density of the sample Countries, which would suggest that, in comparison to other companies, it would far less able to take advantages of economies of density. Further, CBL provides service in four islands – this is also a relative cost disadvantage in comparison to single-island countries, like many of the other Countries in the sample. In spite of these relative geographical disadvantages CBL’s basic broadband Internet price is on average lower than the prices of comparable broadband Internet services in the other surveyed Caribbean Countries.

Table 4: Summary results of CBL benchmarking analysis for Basic Broadband Internet Service

Country	GDP/capita (USD,PPP)	Population	Surface Area (sq.km)	Population Density (pop / sq.km)	Monthly Fee for Basic Broadband Internet (USD)	Monthly Fee Basic Broadband Internet / KB/s (USD)
Antigua and Barbuda	\$18,591	84,814	440	193	\$48.38	\$0.048

Aruba	\$21,800	100,899	180	561	\$55.94	\$0.027
Bahamas	\$19,844	331,140	13,880	24	\$21.70	\$0.014
Barbados	\$16,957	293,942	430	684	\$34.91	\$0.035
Bermuda	\$69,900	64,000	50	1280	\$104.95	\$0.052
British Virgin Islands	\$38,500	24,491	151	162	\$59.00	\$0.059
Cayman Islands	\$43,800	53,529	260	206	\$49.40	\$0.049
Dominica	\$7,689	72,793	750	97	\$33.38	\$0.033
Dominican Republic	\$6,706	9,725,569	48,730	200	\$56.43	\$0.056
Grenada	\$7,344	105,668	340	311	\$26.81	\$0.009
Jamaica	\$6,079	2,675,800	10,990	243	\$19.92	\$0.019
Puerto Rico	\$18,300	3,943,229	8,950	441	\$71.16	\$0.071
St. Kitts and Nevis	\$14,480	48,790	260	188	\$36.38	\$0.018
St. Lucia	\$9,786	167,975	620	271	\$29.63	\$0.030
St. Vincent & Grenadines	\$7,691	120,325	390	309	\$34.07	\$0.034
Trinidad and Tobago	\$23,507	1,333,050	5,130	260	\$35.40	\$0.018
Turks and Caicos Islands	\$11,500	22,942	948	24	\$49.00	\$0.049
Virgin Islands (U.S.)	\$14,500	108,448	350	310	\$59.95	\$0.060
Average (inc. Bahamas)	\$19,832	1,070,967	5,158	320	\$45.91	\$0.038
Average (exc. Bahamas)	\$19,831	1,114,486	4,645	337	\$47.33	\$0.039

2.3.4 Comprehensive and Balanced Benchmarking Results

The results of CBL’s benchmarking analysis support the conclusion that CBL’s prices are generally below the comparable prices in comparable Countries. There is, therefore, no justification to introduce any new retail price regulations with respect to CBL’s pay TV or broadband Internet services on the basis of price level concerns. The concerns expressed in the Consultation Document simply do not apply in the case of pay TV or broadband Internet services in the Bahamas.

2.4 If price regulation is deemed necessary in the case of cable TV and/or high-speed data services, it should be narrowly focussed and light-handed in nature

While the Consultation Document sets out objectives for proposed price regulation,¹⁵ CBL submits that it is crucial that the Guidelines for Regulation and Government measures, prescribed in Section 5 of the Communications Bill, 2009, take precedence in terms of first assessing the need for price regulation (the “Guidelines”).

With respect to any regulatory or other measures instituted by the Utilities Regulation and Competition Authority (“URCA”), Section 5 of the Communications Bill, 2009, states the following (with emphasis added):

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—

(a) market forces shall be relied upon as much as possible as the means of achieving the

¹⁵ Consultation Document, paragraph 49.

communications policy objectives

- (b) *regulatory and other measures shall be introduced –*
 - (i) *where in the view of URCA market forces are unlikely to achieve the electronic communications policy objective within a reasonable time frame, and*
 - (ii) *having due regard to the costs and implications of those regulatory and other measures on 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; 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 stress the importance of first and foremost relying on market forces to the greatest degree possible. To the extent that regulatory measures are deemed necessary, they should be minimally intrusive as well as efficient and proportionate to their purpose.

CBL submits that these Guidelines are particularly relevant in the case of pay TV services and high-speed data services and connectivity. In both cases, there is no compelling evidence that CBL possess SMP with respect to the provision of these services. In addition, the benchmarking analysis shows that prices are generally below comparable prices in other countries in the Caribbean. Thus, there is no reason to impose price regulation on these services, when provided by CBL. Doing so would result in unnecessary and onerous regulatory costs, including ongoing administrative, financial reporting and compliance costs, all of which would be disproportionate to their purpose. Rather than serving to protect the interests of consumers, price regulation of cable TV and high-speed data and broadband Internet services are more likely to dampen innovation and investment.

To the extent it is determined, nevertheless, that price regulation of CBL’s cable TV service should be maintained – a position with which CBL disagrees – then any such price regulation should be narrowly focussed (i.e., apply to “basic” cable TV only) and light-handed in nature.

CBL believes that there is no justification for price regulating high-speed data services and connectivity, including broadband Internet services. These services are not currently price regulated. Clearly, there is no evidence to suggest that CBL possesses SMP in this market. Indeed, CBL is a market entrant, not the incumbent.

Here again, if contrary to CBL’s position, it is deemed necessary to introduce price regulation on high-speed data services and connectivity, then such regulation should be limited to a defined “basic” broadband Internet service (for instance, CBL’s most basic broadband service offering,

CoralWave Jazz).¹⁶ In this respect, if price regulation is applied to CBL's basic broadband Internet service or, more widely, to its high-speed data services, CBL submits that principles of regulatory fairness and symmetry suggest that the incumbent's (i.e., BTC's) high-speed data services should be price regulated in a similar manner.

To the extent that price regulation is applied to any of its services, CBL supports the use of an automatic price adjustment or price cap formula, while taking into account the unique nature of the services in question. The rationale for CBL's positions on the details of a price cap regime is provided in Section 3 below, which addresses the Consultation Document questions. A brief summary of CBL's proposed price cap mechanism in the case of its basic cable TV and basic broadband Internet services (assuming they are regulated) is provided here:

2.4.1 Basic Cable TV Service

- Price cap index formula” “ $I - X +/-Z + PCA + CA$ ”, which includes explicit program cost and capex adjustment factors (as described below).
- Inflation or “I” factor (i): All Bahamas Price Index.
- Productivity or “X” factor: In CBL's view, the suggested approaches in the Consultation Document are not practical or feasible in its case; thus, alternative approaches in the case of basic cable TV service would need to be considered in the context of a price caps implementation process, if deemed necessary, by URCA.
- Exogenous Cost or “Z” Factor: As specified in Consultation Document, but expanded to include any event that disproportionately impacts the Bahamas communications market (such as a hurricane).
- A *Programming Cost Adjustment or “PCA” Factor* to allow for pass-through of programming cost changes which are outside the control of the operator.
- A *Capex Adjustment or “CA” Factor* to promote/encourage operators to invest in digital network upgrades and capacity expansion, which allow a pass-through of capex costs specific to measures to improve the provision of basic service. CBL would allocate their capital expenditure, first between basic television services and other services, and subsequently between the provision of the basic television program service and other television-related services. The net capital investment may then be recovered by the operator over the period of the license.

2.4.2 Basic Broadband Internet Service

- Standard price cap index formula” “ $I - X +/-Z$ ”
- Inflation or “I” factor: All Bahamas Price Index.

¹⁶ Coral Wave Jazz provides 50 hours Internet access per month, 256kb/s upload speed, 1.5 Mb/s download, Up to 3 private e-mail accounts, Password protected access, 5MB Free Web Space, 24hr Free Unlimited Technical Support - \$21.70 and Cable Modem - \$99.95. Additional hours are \$1.75 each.

- Productivity or “X” factor: In CBL’s view, the suggested approaches in the Consultation Document are not practical or feasible in its case; thus, alternative approaches in the case of basic broadband service would need to be considered in the context of a price caps implementation process, if deemed necessary, by URCA.
- Exogenous Cost or “Z” Factor: As specified in Consultation Document, but expanded to include any event that disproportionately impacts the Bahamas communications market (such as a hurricane).

Ultimately, the specific parameters of any price cap formula that may be applied to CBL’s cable TV services or high-speed data/broadband Internet services and connectivity (assuming one or both is determined to be necessary) would need to be determined through a consultation process by URCA, CBL and other interested parties in a fair and reasonable manner consistent with the for price cap regulation objectives set out in the Consultation Document.

2.5 If price regulation is deemed necessary in the case of cable TV and/or high-speed data services, a clearly defined Interim Pricing Framework is necessary

To date, CBL’s basic cable TV service has been price regulated, pursuant to CBL’s cable television license (“CATV Licence”). The CATV Licence granted in 1994 established a price of \$30 per month for basic service. However, despite having filed several applications to increase this price to reflect increases in the costs of provisioning the service, the \$30 basic cable TV price has been unchanged to this day. Thus, the initial \$30 monthly price has been in effect for fifteen years.

The benchmarking analysis provided in Annex A demonstrates that CBL’s basic cable TV price is well below that of comparable countries. Moreover, there are a number of factors which further demonstrate that an increase in the current price is long overdue:

- The Bahamian all-items inflation index has increased by roughly 30% in total over the period year-end 1995 to 2008.¹⁷
- More specially in the case of CBL’s operating costs, since 1995, (i) CBL’s programming cost per subscriber for basic cable TV service has increased by roughly 95%;¹⁸ (ii) its salary and benefit costs per subscriber (for customer service, technical and IT and administrative personnel) have increased by over 200%; and (iii) other operating expenses per subscriber (including plant maintenance, electricity, vehicles, etc.) have also increased by over 200%.
- Similar cost pressures exist in other countries such as the U.S. In response to operating cost increases, the price of expanded basic service in the U.S. has risen from roughly \$22

¹⁷ Consumer Price Section of the Department of Statistics.

¹⁸ As noted in a recent news article, CBL’s signal fees relating to basic cable TV rose by close to \$3 million last year alone. See N. Hartnell, *\$3m signal fee rise hits Cable basic margins*, Tribune, 24 June 2009, page 1B.

in 1995 to \$49.65 as of 2008, an increase of 122%. Over the same period, the U.S. CPI grew by just 38%.¹⁹

Thus, in CBL's view it is critical that the Interim Pricing Framework contemplated in the Consultation Document include a clear and well-defined interim price review mechanism. CBL is simply not in a position to hold basic cable TV service price constant at \$30 indefinitely without significant deterioration in the quality of that service.

3.0 Responses to the Consultation Questions

In this section, CBL provides its responses to each of the 22 questions included in the Consultation Document. CBL notes that it has generally responded to the questions in the context of their potential applicability to cable (pay TV) and/or high speed data and broadband Internet services. Some of the questions – specifically questions 1 through 4 – pertain to fixed line and/or mobile telephony services. CBL, of course, does not provide fixed or mobile voice services at this time, so its responses to these questions are based on what CBL believes to be most conducive to supporting competition in those segments of the communications market in The Bahamas.

Question 1

Is there a need for further tariff rebalancing in the Bahamas?

Response 1

In CBL's view, BTC's monthly residential fixed line rental price of \$15, which includes unlimited local calling, appears to be below cost, the degree to which would have to be determined through a detailed costing analysis. With a view to the objectives of increasing reliance on market forces (i.e., by promoting competition) and promoting efficiencies (i.e., by fostering cost-orientation in pricing), CBL considers that further tariff rebalancing is warranted.

Question 2

Do you agree that the regulator should design a price regulation framework that enables tariff rebalancing? If you disagree, please state your reasons.

Response 2

Fixed line telephony service is an essential service for most residential customers and, therefore, changes in its prices should be considered carefully by URCA. Thus, rather than design a price cap framework to provide BTC with the flexibility to rebalance its tariffs over time as it sees fit, CBL considers that URCA should first determine the

¹⁹ FCC, Report on Cable Industry Prices, released 16 January 2009.

degree to which tariff rebalancing is necessary and, if it is, approve specific increases to BTC's residential fixed line prices along with offsetting reductions in other service prices (such as domestic and/or international calling prices). In this way, residential customers would have greater certainty as to the extent and timing of any tariff rebalancing approved by URCA.

Question 3

Are there benefits from introducing an option for monthly line rental at a lower price which excludes free local calls? If so, what type of plans for charged local calls would be most appropriate?

Response 3

CBL notes that BTC already provides a discounted fixed line rental price of \$12 for senior citizens, which is aimed at addressing potential affordability issues for this group of users. Section 5 of the Communications Bill 2009, states that "market forces should be relied on as much as possible as the means of achieving communications policy objectives". CBL believes market forces should be relied on to provide consumers with different pricing options. By promoting competition in the fixed line voice market, there should be no need for regulation to dictate the pricing plans or structures.

Question 4

Should The Bahamas move to a caller-pays principle for all calls? If you disagree, please state your reasons.

Response 4

In principle, CBL is generally in favour of a move towards the caller-pays principle for all calls. CBL notes the generally positive effects that have resulted from such a move in other countries that had previously used the receiver-pays principle for some of their calls. However, CBL notes that issues related to such a move generally and specifically in The Bahamas are various and complex, including relating to numbering, consumer education, wholesale regulation, revenue impacts on different operators, among others. None of these other issues have been included or considered in the Consultation Document and hence CBL considers that a final decision on the issue to be premature at this time. Therefore, CBL recommends that URCA consider this issue in a comprehensive manner in the future, at which time CBL would be in a position to comment in a specific manner.

Question 5

Do you agree that the historical approach to retail price regulation should be reformed in the newly liberalised environment? If you disagree, please state your reasons.

Response 5

Under the existing approach, high speed data services, including broadband Internet, have not been subject to retail price regulation, other than requiring that the regulator be notified of any changes to existing prices or introductions of new service prices.

In CBL's view, this approach has worked effectively to date, as is evident from the highly competitive nature of the high speed data services market in The Bahamas as well as the CBL's very favourable broadband Internet service prices relative to other comparable countries (as detailed in Sections 2.2 and 2.3 above). Thus, CBL submits that there is no need or justification for any form of retail price regulation in this market segment, as is the case today.

In the case of cable TV services, CBL notes that to date only the price of basic cable TV has been subject to price regulation or, more correctly, a price freeze which has now been in place for 15 years. CBL considers that the current approach to basic cable TV price regulation has been a failure. No price adjustment mechanism (such as a price cap formula) was put in place to permit changes to the basic price over time in response to service cost increases. More importantly, no regulatory process was properly established to allow periodic reviews of the price for basic cable TV service to ensure it remained just and reasonable over time.

As discussed in Section 2.0 above, while CBL believes that there is no compelling reason to subject cable TV prices, basic or non-basic, to price regulation going forward. To the extent basic cable TV prices are nevertheless price regulated, it is critical that a properly functioning price review mechanism be put in place immediately (i.e., in the context of the Interim Pricing Framework).

Question 6

Do you agree with the objectives proposed for price control regulation? If you disagree, please state your reasons.

Response 6

Generally, CBL agrees with the retail price regulation objectives set out in paragraph 49 of the Consultation Document. That said, however, as discussed in Section 2.4 above, CBL believes that the critical question to be considered first and foremost is whether retail price regulation is necessary at all in the case of any individual or set of communications services. In this respect, Section 5 of the Communications Bill, 2009, specifies the guidelines to be followed to establish whether retail price regulation measures are necessary and appropriate. These guidelines stress the importance of relying on market forces to the greatest degree possible and, where regulatory measures are deemed necessary, they indicate that any such measures should be minimally intrusive as well as efficient and proportionate to their purpose.

CBL considers that measures to protect against anti-competitive pricing are necessary in

the communications sector as in other sectors of the Bahamian economy; however, imposing unnecessary and overly restrictive retail price regulations, in the case of pay TV services and/or high-speed data services and connectivity, would only serve to undermine many of the objectives set out in the Consultations Document – e.g., fostering reliable and high quality services, and encouraging investment and innovation.

Question 7

Do you agree with the Government's view that wholesale price regulation alone may not be sufficient to protect consumer interests in the present and near future?

Response 7

Wholesale price regulation can provide an effective alternative to retail price regulation when there are well developed wholesale (upstream) and retail (downstream) service markets. However, this is not the case at the present time, nor is it likely to develop in the near future in The Bahamas (given its low population density and dispersed geography).

All the same, at the retail level, there are competing facilities-based options in the case of cable TV – i.e., cable and DTH satellite TV services as well as emerging options such as IP-TV and Internet-based television programming services. As well, in the case of high-speed data services, including broadband Internet, there are also numerous competitive service alternatives using a variety of technologies available to consumers – i.e., cable, DSL, fibre (CBL and BTC), terrestrial wireless and satellite. Thus, in CBL's submission, while wholesale regulation is impractical in the markets for multi-channel television programming services and high-speed data services in the Bahamas, retail price regulation is unnecessary and unwarranted as well (as is also discussed in Section 2.2 above). Market forces in these two cases are, in CBL's submission, sufficient to protect the interests of consumers.

Question 8

Do you agree with the proposal to adopt price cap regulation? If you disagree, please state your reasons.

Response 8

CBL agrees that price cap regulation is clearly superior to rate of return or other types of earnings regulation. Therefore, to the extent economic regulation of a service or class of services is determined to be necessary (e.g., due to a finding that the service is essential from consumers' perspective and that the incumbent service provider is found to possess SMP), then CBL agrees that, consistent with international best practice, price cap regulation should be adopted.

As discussed in Section 2.4 above, CBL submits that Section 5 of the Communications Bill, 2009, should first and foremost guide the determination of whether a specific service

or class of services should be subject to price regulation and, where it is found necessary, price regulation should be as narrowly focussed and light-handed in nature as possible.

Question 9

Do you agree with the proposal to introduce an Interim Pricing Framework in the short term? If you disagree, please state your reasons.

Response 9

As implied in paragraph 64 of the Consultation Document, CBL agrees that implementing a price cap regime can be a complex and time consuming process and, therefore, not something that URCA could put in place in the short run.

To the extent that URCA finds that an individual or class of communications services should be subject to price cap regulation, an implementation process would be required which, among other things, would require a determination of going-in prices.

CBL agrees that an Interim Pricing Framework is required for any services that URCA finds should be subject to price regulation. For the reasons provided in Section 2.0 above, CBL submits that pay TV and high-speed data services and connectivity need not be subject to price cap regulation. In such case, there would be no need for an Interim Pricing Framework covering these services (other than, for instance, a requirement to notify URCA of current price levels, changes to existing price levels and the introduction of new services and prices as under the existing regime).

Otherwise, if it is determined, for instance, that basic cable TV service prices should continue to be subject to price regulation, then CBL submits that the existing \$30 price be retained as the going-in price level. However, CBL also stresses that the Interim Pricing Framework must include a clear and well-defined process to address price change applications in an efficient and effective manner (as outlined in response to the next question).

Question 10

What principles should underpin any Interim Pricing Framework for retail price regulation and on the nature of the interim arrangements?

Response 10

In CBL's view it would not be possible for URCA to establish a price cap formula or other automatic price adjustment formula for the duration of Interim Pricing Framework. Doing so would require the same effort as creating an initial price cap regime. Consequently, for any individual or class of communications services for which price regulation is determined to be necessary, a clear and well-defined process to address price change applications in an efficient and effective manner must be put in place.

CBL agrees that the proposed governing principles for the Interim Pricing Framework are reasonable; however, it submits that a clearly defined procedure is required for reviewing (i) changes to existing price regulated service services and (ii) , where required, the approval of prices for new services.

CBL submits that a company providing a price regulated service should be free at any time to file an application to change the price of that service or introduce a new service. Under this process, CBL proposes that:

- Price reductions should be subject to “deemed approval” after 10 days.²⁰ The onus would be on URCA to suspend the price reduction, if it considers that the lower price may potentially be anti-competitive or unjustly discriminatory. In such cases, approval would need to be formally denied within the 10 day period (in writing). The company filing the price decrease could then be required to provide further justification for the decrease, and other interested parties could file comments as well. However, the schedule for any such process should be set so that URCA would be in a position to issue a decision within 30 days.
- Price increases would be subject to explicit approval by URCA. The regulated company would be required to notify customers as well as URCA of any proposed price increase to an existing regulated service. Rationale for the price increase would be filed with URCA. Once filed, interested parties would have 30 days to comment on the proposed price increase, and the regulated company would have 15 days to file its reply. If deemed necessary, URCA could also ask the regulated company to answer questions concerning the price increase proposal. A decision by URCA on any proposed price increase(s) should, however, be issued within 60 days of the filing of the price increase proposal.
- In CBL’s view, as a general rule, most new services should not be subject to price regulation. However, that said, a streamlined process could be established to determine whether price regulation may be necessary in the case of a new service that falls within a class of existing price regulated services. In such cases, the regulated company would notify URCA that it plans to introduce a new service, along with the proposed price and rationale for the classification of the service as either regulated or unregulated. A deemed approval process could apply in these cases. If URCA had concerns with the price or terms and conditions of the service, it would be required to formally deny the proposal within 10 days. A further review of the proposal would then be undertaken. However, the schedule for any such process should be set so that URCA would be in a position to issue a decision within 30 days. Concerns over the proposed classification matters could be addressed further, if necessary, without delaying the introduction of the new service.

²⁰

In other words, if URCA considers the proposed rate reduction raises no concerns, no action on its behalf is required. The regulated rate would take effect.

Question 11

Do you agree with the proposed regulation of special offers and discounts? If you disagree, please state your reasons.

Response 11

CBL supports the adoption of clear and well-defined rules for special offers and discounts, such as those set out in paragraph 70 of the Consultation Document, for price regulated services.

Question 12

Do you agree with the proposed form of the price cap shown above? Do you have views based on experience with price cap regimes on the application of a price cap with this broad form?

Response 12

CBL agrees that the proposed form of price cap regulation described in paragraphs 75 to 79 of the Consultation Document is consistent with international practice.

However, CBL notes that the complex multi-service, multi-basket price cap formula set out in the Consultation Document is typically applied to incumbent telecommunications companies, not cable TV companies or competitive market entrants. While CBL believes that neither pay TV services nor high-speed data services and connectivity need be subject to price cap regulation, if either one or both of these services is ultimately made subject to price cap regulation by URCA, CBL submits that a price cap should only apply to basic services. For instance, if basic cable TV service is price regulated a price cap automatic price adjustment should be applied strictly to the existing basic cable TV service price.

That said, CBL considers that if basic cable TV is price cap regulated, then two specific cost adjustment factors specific to the provision of cable TV services should be accommodated in the price cap formula:²¹

- A *Programming Cost Adjustment Factor* to allow for pass-through of programming cost changes which are outside the control of the operator.
- A *Capex Adjustment Factor* to promote/encourage operators to invest in digital network upgrades and capacity expansion, which allow a pass-through of capex costs specific to measures to improve the provision of basic service. CBL would allocate their capital expenditure, first between basic television services and other services, and subsequently between the provision of the basic television program service and

²¹ Both of which have been applied in other countries such as Ireland in 2000. See Office of the Director of Telecommunications Regulation (Ireland), *Rate Regulation Mechanisms for Cable and MMDS Television Operators, Report on consultation process*, Document No. ODTR 00/56, August 2000.

other television-related services. The net capital investment may then be recovered by the operator over the period of the license.

In addition, if basic broadband Internet service (for instance to CoralWave Jazz) is also classified as a price regulated services, then CBL considers that a standard price cap automatic price adjustment formula could be applied to that service. However, CBL would expect that BTC would be subject to a similar price cap constraint, since if CBL is deemed to have SMP in the broadband Internet service market then so too should BTC, given that BTC is the incumbent.

Question 13

Do you agree with the use of a 'building blocks' regime to determine starting prices under the price cap?

Response 13

The Consultation Document outlines two approaches for setting initial or starting prices going-into a price cap plan. The first involves the use of international data (presumably some form of benchmarking analysis) and the second is a cost accounting or separations based approach (also referred to as the “building blocks” approach).

CBL notes that the second approach is common in the case of price cap regimes established for many incumbent telecommunications companies around the world. However, it is a complex, costly and time consuming approach for setting going-in prices and, thus, may not be practical or feasible in the case of a small country such as The Bahamas. Moreover, CBL submits that applying this approach specifically in the case of CBL’s pay TV services or high-speed data services and connectivity would clearly be unduly onerous, costly, inefficient and disproportionate to its purpose – contrary to the Guidelines established in Section 5 of the Communications Bill, 2009.

At paragraph 89 of the Consultation Document, which specifically addresses television services, it is noted that satellite TV operator BSkyB was required in 2002 to file a cost separations study for its satellite TV operations as part of an abuse of dominance case before the U.K. Office of Fair Trading. In CBL’s view, however, this example is of little relevance to the question of whether or not to adopt a similar cost separations approach in the case of CBL’s cable TV services. BSkyB has many times the financial resources of CBL, and U.K. Office of Fair Trading resources far exceed those of URCA as well. While the details of this specific case are not explained in the Consultation Document, the cost separations evidence required of BSkyB by the U.K. Office of Fair Trading was in the context of an abuse of dominance complaint, not a price cap proceeding. The fact that BSkyB was required to conduct and file a cost separations study in this instance does not imply that CBL should be required to do the same for regulatory reporting purposes. The relevant question is whether the cost of doing so is efficient and proportionate to its purpose. CBL submits that it is not.

While an international benchmarking approach would be more efficient, it is critical that any such analysis be done in a fair and balanced manner, using properly comparable countries (as is well illustrated in Section 2.3 above and in Annex A). Such an analysis would have to take into account, for instance, factors such as population density, per capita income, land mass, etc.

As explained, in the case of basic cable TV service, assuming it is classified as price regulated, a just and reasonable price for the service could be established during the Interim Pricing Framework period. As it stands, the existing \$30 price, which has been in effect for 15 years, is unquestionably too low. It should be reviewed and increased accordingly as soon as the Interim Pricing Framework is established.

A similar approach could be adopted for basic broadband Internet access, assuming it is classified as price regulated contrary to CBL's position. The price for this service could be reviewed, if necessary, during the Interim Pricing Framework period to determine if it is just and reasonable. As the benchmarking analysis presented in Section 2.3 demonstrates, however, CBL's basic broadband Internet service is currently priced well below similar services found in comparable Caribbean countries.

Question 14

Do you agree with the use of CPI within the price control formula? If you disagree, please state your reasons.

Response 14

CBL supports the use of a CPI measure as the inflation factor in the price cap formula.

Question 15

Do you agree with the proposed use of the prior year's inflation rate as measured in the All Bahamas Price Index? If you disagree, please state your reasons.

Response 15

CBL supports the use of the All Bahamas Price Index as the specific measure of inflation in the price cap formula.

Question 16

Do you agree with the use of an X-factor to reflect expected productivity gains over the period?

Response 16

The Consultation Document outlines two approaches for setting the productivity or X-factor in the price cap formula. The first involves the use of international benchmarking

(such as collecting measures of total factor productivity from other countries) and the second a forward-looking price cap model approach.

Here again, CBL considers the latter approach to be more commonly used in the case of price cap plans applied to incumbent telecommunications companies. However, it is also a complex, costly and time consuming approach to setting the X-factor. More importantly, CBL submits that applying this approach specifically in the case of CBL's cable TV or high speed data services would clearly be unduly onerous, costly, inefficient and disproportionate to its purpose – contrary to the guidelines established in Section 5 of the Communications Bill, 2009.

In addition, given the relatively few instances where price cap plans have been applied to cable companies around the world, CBL believes that finding suitable countries for a proper productivity benchmarking analysis would likely be difficult if not impossible. Thus, the alternative approach would likely not prove practical or feasible in the case of either basic cable TV service or broadband Internet service.

Therefore, alternative approaches would likely need to be considered for setting the X-factor within any price cap formula that may be applied to CBL's cable TV services or high-speed data/broadband Internet services (assuming one or both is determined to be necessary). These approaches would have to be identified and considered through a consultation process involving URCA, CBL and other interested parties in a fair and reasonable manner consistent with the for price cap regulation objectives set out in the Consultation Document.

Question 17

What price control period do you think should be used? Do you believe that the appropriate price control period is affected by the proposed phasing in of competition in The Bahamas?

Response 17

CBL agrees that expected imminent changes in competitive conditions should influence the nature of a price cap regime as well as the established term of the regime. However, in order for the incentives of a price cap regime to function effectively, CBL believes that the term of a price cap regime should be no shorter than three years. On the other hand, given that this would represent the first price cap plan to be implemented in the communications sector in the Bahamas and that market conditions are changing rapidly, CBL believes that the term of the initial plan should be no longer the four years. In fact, in this latter respect, to the extent competition develops to a degree sufficient to protect the interests of consumers with respect to any price capped service(s), CBL submits that the regulated firm should be permitted to file an application with URCA requesting that that service (s) be forborne from price regulation. The onus would be on the applicant to provide factual evidence in support of its request.

Question 18

Should a Z factor be included? If a Z factor is included what are some of the exogenous occurrences that should be considered?

Response 18

The inclusion of a Z-factor, to take into account exogenous cost changes that are unique to or disproportionately affect the market in which price are regulated and are outside the control of the regulated firm, are typically included in most if not all price cap regimes. CBL agrees that a Z-factor should be included in any price cap plan adopted in The Bahamas.

The Z-factor should allow an appropriate level of cost recovery for events that are outside of the control of the regulated firm, which could include costs of new regulatory obligations, new regulatory charges (e.g., universal fund contributions) and new sector-specific taxes, among others. Also, given that telecommunications plant and equipment is susceptible to significant damage in the event of a hurricane or other natural disasters, provision should also be made to allow an appropriate level of cost recovery in the case of such events. In addition, changes in technology that are outside of the price regulated company's control and impose a significant cost burden should also be eligible as an exogenous cost factor. More generally, in CBL's view, any event that is outside of the price regulated company's control and has a disproportionate impact the communications sector should be eligible for potential treatment as an exogenous cost adjustment factor.

Question 19

Do you agree that quality control incentives should be built into price control regulation? What are the relevant key performance indicators (KPIs) that you consider could be utilised for monitoring quality?

Response 19

Cable TV and high-speed data services are currently subject to a high degree of competition, and new competitive alternatives are also emerging. While CBL does not believe that price regulation is required for these services, if it is nevertheless imposed, CBL considers that a quality of service measurement regime and, potentially, an associated adjustment factor within the price cap formula would be unnecessary and unwarranted. Introducing such measures in the case of either cable TV or high-speed data services, in CBL's submission, is unnecessary and would be inconsistent with the provisions set out in Section 5 of the Communications Bill, 2009.

Question 20

Should operators be able to carry over out-performance in early years into the later years within the same price control period?

Response 20

The ability to carry over head room is a standard feature of virtually all price cap plans. CBL agrees that it be permitted in any price cap plan(s) that may be implemented by URCA.

Question 21

Do you agree with the initial thinking on the provision of information for use in price control regulation?

Response 21

CBL agrees with the proposed price cap formula reporting requirements set out in paragraph 134 of the Consultation Document.

As to additional regulatory financial reporting (“RFR”) requirements, as contemplated in paragraph 66 of the Consultation Document, CBL considers that any such requirements should be kept to a minimum to ensure that regulatory costs are efficient and proportionate to their purpose, in keeping with Section 5 of the Communications Bill, 2009.

Question 22

Do you agree with the views expressed above on the use of baskets of services in retail price control regulation? Do you have views on the appropriate form of the tariff baskets to be used?

Response 22

CBL is in general agreement with the comments in the Consultation Document on the use of service baskets within the context of a price cap plan. However, CBL notes that much of the discussion on this topic pertains to price cap plans applicable to telecommunications services. CBL submits that to the extent price regulation is applied to either cable TV and/or high-speed data services, the question of service baskets should not arise; only a single basic service in either case need be price capped, if at all.

Annex A: CBL Benchmarking Analysis

The benchmarking study was carried out between July 24 and July 28, 2009.

Basic Cable TV Service Benchmarking

Information on monthly subscription prices²² for cable TV services was collected for 13 Caribbean Countries, including The Bahamas.

Information on prices and plan details was collected from the websites of the companies offering the services in each Country and through follow-up phone calls (when websites did not offer complete information). Data from each Country was analyzed to determine which cable packages were most comparable to the “SuperBASIC” cable service plan offered by CBL in The Bahamas. Cable plans were compared based on the number of channels offered. The lowest-cost comparable cable plan from each Country was included in the benchmarking study. Where a Country had more than one cable service provider, the study used the lowest-priced plan available among them.

All prices,²³ including any applicable taxes, were converted from their quoted currencies into U.S. dollars, based on the prevailing exchange rate on July 28, 2009 (obtained from the XE Universal Currency Converter, <http://www.xe.com/ucc>). A “per-channel” price for each cable package was then calculated by dividing the monthly price by the number of video channels included in the package.

Table 5 presents the source data for the benchmarking analysis for basic cable TV service, for each of the Countries, including the name of the corresponding cable company, the web address of the company, the name of the cable plan used as the “comparable plan”, the number of video channels available in that plan, the quoted price on the website (in the quoted currency, including any applicable taxes), the exchange rate used and the US dollar price used for benchmarking purposes (also included in Table 3).

Basic Broadband Internet Benchmarking

Information on monthly subscription prices for Internet services was collected for 18 Caribbean Countries, including The Bahamas.

Information on prices and plan details was collected from the websites of the companies offering the services in each country and through follow-up phone calls (when websites did not offer

²² In cases where plans could be purchased with or without a yearly contract, the study used the “no contract” price.

²³ Some countries have not been included in one or both aspects of the benchmarking study because information could not be obtained during the period of the study or because they did not appear to have relevant services on offer.

complete information). Data from each Country was analyzed to determine which Internet service plans were most comparable to the “Coral Wave Jazz” Internet service plan offered by CBL in The Bahamas. Internet plans were compared by download speed. The lowest cost comparable Internet plan from each Country was included in the benchmarking study. Where a Country had more than one service provider, the study used the lowest-priced plan available among them.²⁴

The first comparator for Internet plans was download speed: the study chose the plan with an equal or lower download speed. Where no plan had an equal or lower download speed, the study also took upload speed into account, and chose the lowest download speed plan with the most comparable combination of download and upload speeds.

All prices, including any applicable taxes, were converted from their quoted currencies into U.S. dollars, based on the prevailing exchange rate on July 28, 2009 (obtained from the XE Universal Currency Converter, <http://www.xe.com/ucc>). A “per-kilobyte/second” price for each Internet plan was calculated by dividing the monthly price (including taxes) by the download speed in kilobytes per second (kb/s) available in the plan.

Table 6 presents the source data for the benchmarking analysis for Basic Broadband Internet service, for each of the Countries, including the name of the corresponding company, the web address of the company, the name of the Internet plan used as the “comparable plan”, the download speed for that plan, the quoted price on the website (in the quoted currency, including any applicable taxes), the exchange rate used and the US dollar price used for benchmarking purposes (also included in Table 4).

Socio-Economic Data

All Socio-Economic Data was obtained from the World Bank’s World Development Indicators (“WDI”) publication for 2009 via the WDI Online Subscription Service. For more information, please refer to http://publications.worldbank.org/ecommerce/catalog/product-detail?product_id=631625&.

The data for population, surface area and population density relates to the year 2007, the most recently available in the WDI. The data for GDP per capita is based on current USD using international purchasing power parities (“PPP”) and generally corresponds to the year 2007. If that year was not available a previous year’s data was used from the WDI. If the WDI did not have such data for the Country, the most recent GDP per capita data (USD, PPP) from the CIA World Fact Book was used. For more information, please refer to <https://www.cia.gov/library/publications/the-world-factbook/index.html>.

Graphical presentation of Benchmarking Analysis

²⁴ Note: In Bermuda, Internet customers must subscribe to both a connecting company (i.e., cable or telecommunications service provider) and an Internet Service Provider (ISP). Therefore, the study chose the pair of providers offering the most attractive combined cost for Internet services.

Figures 1 to 4 below includes a graphical presentation of the benchmark prices on the vertical axis and the GDP per capita on the horizontal axis. Each figure includes the regression line (or trend line) of the relevant data. This simple regression analysis reflects the long tradition in telecommunications economics of regressing telecommunications indicators (in this case prices) against national per capita income. The regression line is the predicted estimate of the respective variable being compared, taking into account all the individual GDP per capita relationships of the Countries included in each of the figure. In this sense, if The Bahamas is above (below) the regression line, The Bahamas' prices are higher (lower) than would be predicted by the regression analysis.

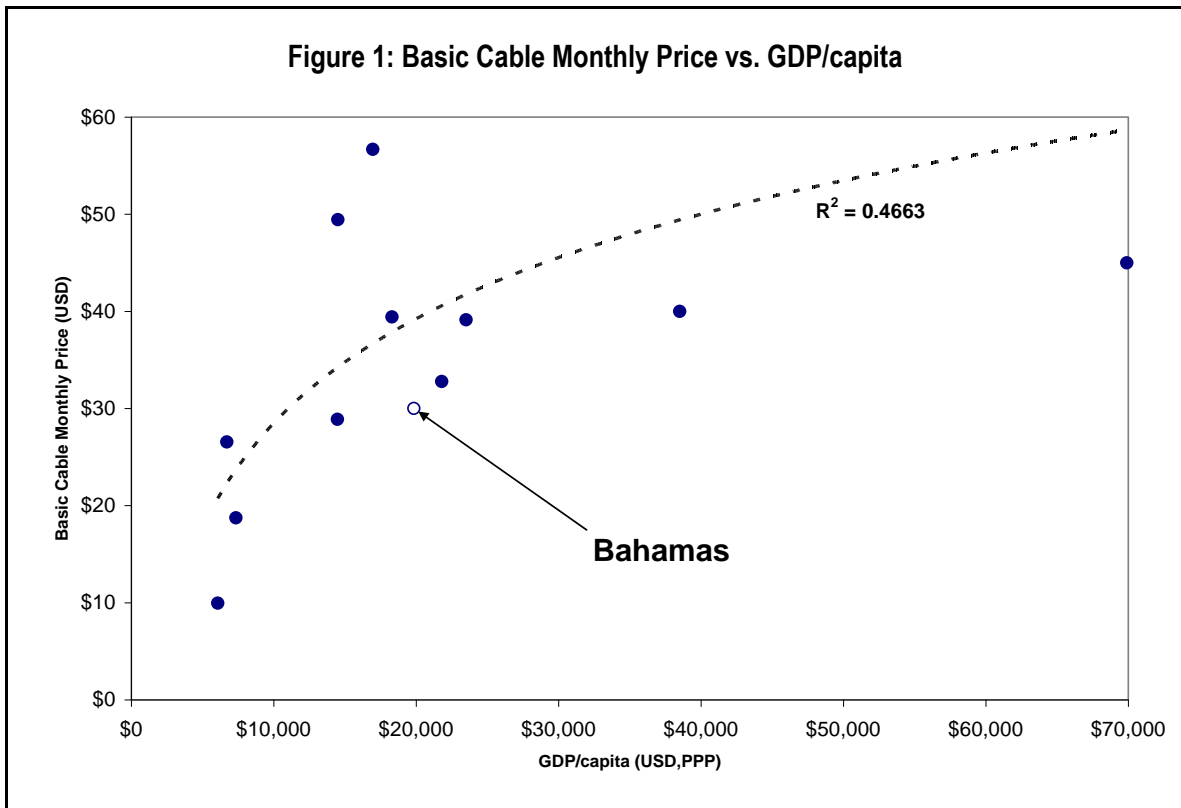


Figure 2: Basic Cable Price / Channel vs. GDP/capita

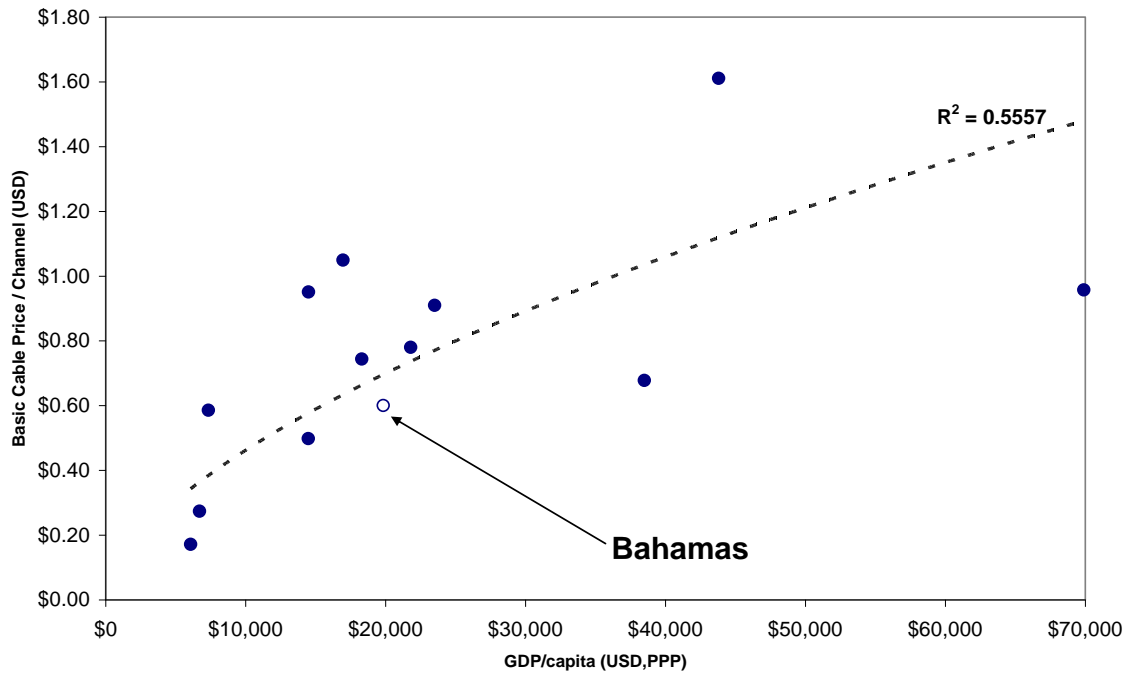


Figure 3: Basic Broadband Monthly Price vs. GDP/capita

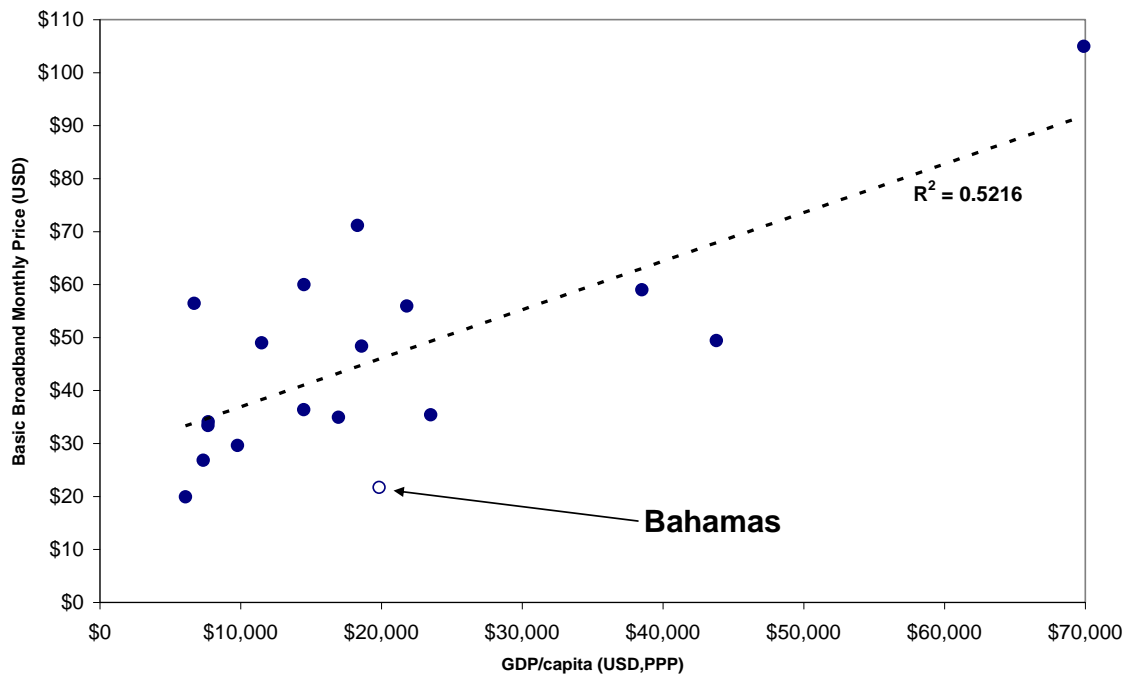


Figure 4: Basic Broadband Price / Bit vs. GDP/capita

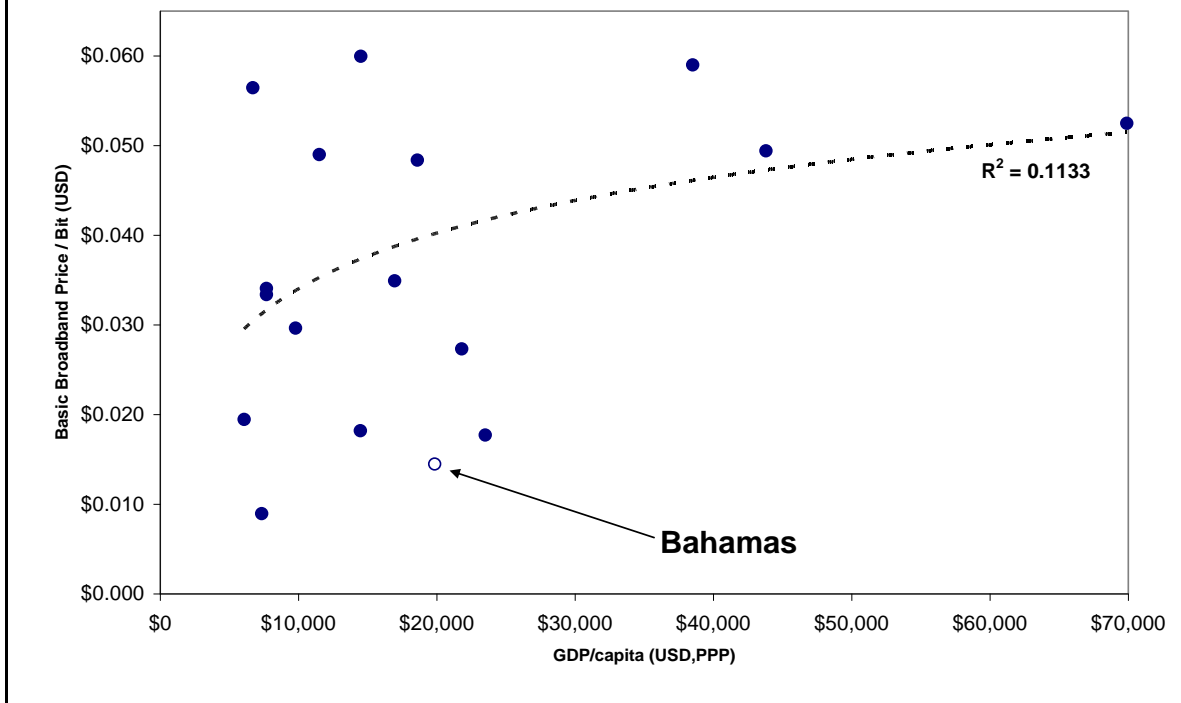


Table 5: Source data for Basic Cable TV Benchmarking Analysis

Country	Company	Web Address	Cable Plan Name	No. of Channels	Quoted Monthly Price (incl. tax)	Exchange Rate	US\$ Price
Aruba	Cable Television of Aruba	http://www.cta.aw/index.php?option=com_content&task=view&id=13&Itemid=29	Analog Basic	42	58.00 Afl	0.565	\$32.77
Bahamas	CBL	http://www.cablebahamas.com/	SuperBASIC	50	\$30.00 US	1.000	\$30.00
Barbados	Multi-Choice TV	http://www.cbc.bb/index.pl/temp41?weba=mctv_packages&s=MCTV%20PACKAGES	MCTV Plus	54	\$112.00 BBD	0.506	\$56.67
Bermuda	Bermuda Cablevision	http://www.cablevision.bm/	Deluxe Tier	47	\$45.00 US	1.000	\$45.00
British Virgin Islands	BVI Cable TV		Basic Plus	59	\$40.00 US	1.000	\$40.00
Cayman Islands	WestStar TV	http://www.weststartv.com/index.php	Limited Basic	46	\$60.00 KYD	1.235	\$74.10
Dominican Republic	Telecable (Tricom)	http://www.telecable.com.do/servicios.php	Family Digital	97	\$954.68 RD\$	0.0278	\$26.54
Grenada	Flow	http://www.flowgrenada.com/default-4.html	Basic Package	32	\$49.95 EC\$	0.375	\$18.73
Jamaica	Flow	http://www.flowjamaica.com/	Flow Lifeline	58	\$873.75 J\$	0.0114	\$9.96
Puerto Rico	One Link	http://www.onelinkpr.com/portal/images/stories/tarifas2009.pdf	Basic	53	\$39.42 US	1.000	\$39.42
St. Kitts and Nevis	The Cable	http://www.thecable.net/	Basic+Tier2+Tier3	58	\$77.00 EC\$	0.375	\$28.88
Trinidad and Tobago	Flow	http://www.flowtrinidad.com/uwatch/Rates/tabid/200/Default.aspx#3	Digital Basix	43	\$287.49 TTD	0.162	\$39.12
Virgin Islands (U.S.)	Innovative Cable TV	http://www.innovativecable.com/index.asp	Expanded Service	52	\$49.44 US	1.000	\$49.44

Table 6: Source data for Basic Broadband Internet Benchmarking Analysis

Country	Company	Web Address	Internet Plan Name	Down-load Speed (kb/s)	Quoted Monthly Price (incl. tax)	Exchange Rate	U.S.\$ Price
Antigua & Barbuda	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Mega	1000	\$129.0 EC\$	0.375	\$48.38
Aruba	Cablenet	http://www.cta.aw/index.php?option=com_content&task=view&id=88&Itemid=75	Cablenet Comfort	2048	99.00 Afl	0.565	\$55.94
Bahamas	CBL	http://www.cablebahamas.com/	CoralWave Jazz	1500	\$21.20 US	1.000	\$21.20
Barbados	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Mega	1000	\$69.00 BBD	0.506	\$34.91
Bermuda	Bermuda Cable Vision + Logic Inc	http://www.cablevision.bm/	Broadband Link + Standard Internet	2000	\$29.95 + \$69.95 = \$104.95 US	1.000	\$104.95
British Virgin Islands	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Mega	1000	\$59.00 US	1.000	\$59.00
Cayman Islands	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Mega	1000	\$40.00 KYD	1.235	\$49.40
Dominica	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Mega	1000	\$89.00 EC\$	0.375	\$33.38
Dominican Republic	Telecable (Tricom)	http://www.telecable.com.do/internet.php	1 MB	1000	\$2030.00 RD\$	0.0278	\$56.43
Grenada	Flow	http://www.flowgrenada.com/broadband.html	Flow Broadband Plus	3000	\$71.49 EC\$	0.375	\$26.81
Jamaica	Flow	http://www.flowjamaica.com/index.php?option=com_content&task=view&id=41&Itemid=143	Flow Jazz	1024	\$1747.50 J\$	0.0114	\$19.92
Puerto Rico	Liberty	http://www.libertypr.com/products.asp?prod=112&cat=58&hierarchy=0	1 MB	1000	\$71.16 US	1.000	\$71.16
St. Kitts and Nevis	The Cable	http://www.thecable.net/	Blue Wave Mega	2000	\$97.00 EC\$	0.375	\$36.38
St. Lucia	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Mega	1000	\$79.00 EC\$	0.375	\$29.63
St. Vincent & Grenadines	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Mega	1000	\$90.85 EC\$	0.375	\$34.07
Trinidad and Tobago	Flow	http://www.flowtrinidad.com/uclick/Rates/tabid/175/Default.aspx#1	U-click Unlimited 1	2000	\$218.49 TTD	0.162	\$35.40
Turks & Caicos	Lime (Cable & Wireless)	http://www.time4lime.com/country_sub.jsp?topmenu=Personal&subMenu=Internet&subSubMenu=Plans	Premier	1000	\$49.00 US	1.000	\$49.00
Virgin Islands (U.S.)	Innovative Powernet	http://www.vipowernet.net/residential.asp	DSL	1000	\$59.95 US	1.000	\$59.95