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**Consultation on**

**Publication of Regulatory (Separated) Accounts**

**ECS 21/2011**

**Submitted to the  
Utilities Regulation and Competition Authority  
February 3, 2012**

**by  
Cable Bahamas Ltd.**

Cable Bahamas Ltd., Caribbean Crossings Ltd. and its subsidiary (hereinafter, "CBL") hereby respond to the public consultation document Publication of Regulatory (Separated) Accounts: ECS 21/2011 issued by URCA on 22<sup>nd</sup> November 2011.

## **I. EXECUTIVE SUMMARY**

CBL's view is that the publication of CBL's separated (regulatory) accounts is unlikely to achieve the main objectives indicated by URCA and therefore imposing this requirement is disproportionate, unnecessary and unreasonable. We foresee that the proposal if applied to CBL by URCA is likely to continue to contribute to the rising cost of regulatory compliance without any corresponding benefit to competition or the consumer. It is important for URCA to recognize that BTC's dominance in the voice telephony market coupled with its entrenched monopoly position and its network ubiquity necessitates a different treatment to CBL's.

## **II. INTRODUCTION**

In imposing the accounting separation and cost accounting requirement on CBL, URCA indicated that the main benefit would be to:

- support retail price regulation where it is applied;
- overcome the information asymmetry between the regulator and regulated entities;
- guarantee audit independence and objectivity in the cost information provided to URCA; and
- support any ex-post assessment under the competition provisions of the Act (e.g. margin squeeze, predatory pricing and excessive pricing).

URCA recognized that there would be less emphasis on the objectives related to wholesale pricing and ensuring non-discrimination for CBL. CBL accepted that the regulator needed to obtain certain cost information in order to perform its functions under the Act. However the imposition of the Telco-style accounting separation obligation during the interim period would be disproportionate, unnecessary and unreasonable.

We have pointed out that:

- a. the imposition of accounting separation to support retail price regulation was not necessary since the retail tariff regulation was going to be rules-based and that the rules set out in that document did not support the need to have accounting separation.
- b. it is unusual to impose accounting separation requirements on cable television so more so the requirement to have it audited.



- c. ex post inquiries (presumably in this case, competition based) did not require instituting an accounting separation regime. Each complaint would have its own elements to address and an accounting separation regime was not fundamental to be able to address complaints. We submitted that URCA's ex post sanctions and remedies would be sufficient to correct any market distortions and therefore accounting separation was not a pre-requisite.

We maintain our objection to the imposition of accounting separation obligations on CBL. We have complied with the requirement thus far and our response to this document should not be taken as a waiver of our objection.

It appears to us that URCA intends to participate in enlarging the application of accounting separation. We have found only one other instance in the world in which accounting separation has been applied to a cable television operator. While accounting separation may be a common SMP obligation, it is uncommon for a cable television operator to be designated with SMP and therefore be faced with this requirement. Historically, incumbent telephone companies have been designated SMP. Cable television operators have been treated as media to introduce real competition in the telecommunications market and provide consumers with choices sooner rather than later. URCA's proposed publishing requirements also go further than URCA's own benchmarking supports<sup>1</sup>. We would argue a more conservative approach given the market is newly liberalized and that the actual and potential size of the market is uncertain and subject to regulatory constraints.

### **III. Responses to the Consultation**

**Question 1: Do you agree with URCA's proposal that an SMP licensee should be required to publish all of the following components of its regulatory (separated) accounts, namely:**

- **Profit and loss statements (consolidated by line of business);**
- **Mean capital employed statement (consolidated by line of business);**
- **Reconciliation (with statutory accounts) statements;**
- **Independent auditor's opinion.**
- **Detail Cost Allocation Methodology (explaining inter alia, details of cost drivers, attributions and/or ABC modelling, where applicable)); and**
- **A Responsibility Statement signed by the Chief Financial Officer?**

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<sup>1</sup> Of the twenty-six countries in the benchmark study, 16 did not have the requirement to publish separated account information.



CBL is of the opinion that the obligation to prepare and publish separated accounts imposed on it is unreasonable and pioneering in the cable television business. CBL's objection to the imposition of an accounting separation requirement has already been canvassed and a fortiori we do not believe that CBL's regulatory accounts should be published.

URCA stated in the Final Decision on Obligations imposed on Operators with Significant Market Power (SMP) (ECS 11/2010) that it was of the view that the publication of separated accounting information could add to transparency in the market, reduce the information asymmetry between SMP operators and other licensees, and increase confidence in the regulatory process<sup>2</sup>. URCA notes that in the absence of relevant and timely information, non-SMP licensees may not be able to understand the derivation of wholesale costs or be certain that transfer prices are applied in a non-discriminatory manner.

Cable TV operators are usually not required to prepare and publish regulatory accounts. If an obligation to publish is imposed, CBL would be the only entity of its kind to publish such information. The information supplied by URCA does not support a divergence from usual or best practice. The publication of its regulatory accounts would therefore only increase information asymmetry with its peers and likely foster unfair competitive issues. With respect to other licensees in The Bahamas, it is unclear how there could be an information asymmetry with respect to CBL. There is no ex ante price obligation on CBL's wholesale products. CBL does not provide any essential wholesale services to other operators and is thus not in possession of information about them. Hence, there is no information asymmetry.

After conducting its international benchmarking exercise, URCA is of the view that the publication of regulatory accounts is central to the attainment of the public policy objectives articulated in s.4 a (ii) and (iii) of the Communications Act, i.e.

- the promotion of investment and innovation; and
- the sustainability of competition in the Electronic Communications Sector (ECS) in The Bahamas.

CBL disagrees that publication of its regulatory accounts would contribute to any of the aforementioned policy objectives. Financial accounts already provide clear and verified information about profitability. The additional information provided in CBL's regulatory accounts is not relevant to market entry as segment or service profitability is not based on stand-alone costs. This is particularly important as the proportion of fixed and common cost across all services is significant in the cable television business and arguably higher than in a telecommunications network providing fixed access,

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<sup>2</sup> ECS 11/2010 – p. 5



conveyance and wireless services. Therefore, returns achieved by each regulatory aggregate are subject to offering the remainder. In other words, the regulatory accounts do not provide a good indication for stand-alone returns of the regulated businesses and thus no basis for market entry into anything but all businesses that CBL operates. Given that stand-alone information for regulatory aggregates is not relevant to market entry decisions and overall financial figures are published in the statutory accounts, CBL believes that publication of its regulatory accounts does not provide any additional information relevant to market entry decisions. It is unclear to CBL how publication of its regulatory accounts would contribute significantly to the achievement of the other policy objective URCA mentions, namely the sustainability of competition in the Electronic Communications Sector. CBL believes that the high cost of preparing, auditing and publishing regulatory accounts is disproportional relative to the hypothetical benefit and is actually counterproductive to the promotion of market entry and therefore investment in the Electronic Communications Sector.

Furthermore, URCA claims that the publication of regulatory accounts as proposed in this consultation can “be effectively used by interested parties to make informed decisions”. It is unclear to CBL which kind of decisions URCA is referring to with regards to CBL’s regulatory accounts. CBL would welcome if URCA could provide a practical example of how interested parties could benefit from the additional information the publication of its regulatory accounts would provide and who these interested parties could be.

A further reason frequently stated to justify the obligation to publish separated accounts is that it helps demonstrate that the SMP operator is not discriminating between its own downstream operations and those of competing providers<sup>3</sup>. This argument does not apply to CBL. URCA has stated in respect of CBL, that it would not be reasonable to require a full set of reports for wholesale businesses, or explicit cost-oriented transfer charge information<sup>4</sup>. However, it does apply to BTC who sells voice termination on its network to its own retail business as well as to other operators such as CBL.

URCA appears to substantiate its proposal that an SMP licensee should be required to publish all of the components of its regulatory (separated) accounts mentioned in question 1 with an overview of international benchmarking precedents<sup>5</sup>.

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<sup>3</sup> See for instance the “Proposed Direction to Jersey Telecom Concerning the Publication, Format and Audit Requirements of its Regulatory Separated Accounts”;

[http://www.cicra.gg/\\_files/110527%20IN%20JT%20Separated%20Accounts.pdf](http://www.cicra.gg/_files/110527%20IN%20JT%20Separated%20Accounts.pdf), page 2

<sup>4</sup> ECS 11/2010, page 15

<sup>5</sup> Supplement to Consultation Document ECS 21/2011



It is worth noting that there are no specific benchmarks for cable television operators. Furthermore, CBL notes that the overwhelming majority of the countries included in the aforementioned URCA benchmarking study require their SMP operators to publish substantially less information than what is included in CBL's regulatory accounts. URCA's benchmarking encompasses 26 countries that have imposed an accounting separation and cost accounting obligation on at least one company. In only 6 of the 26 countries was publication of routing factors currently a requirement according to URCA's study. We have examined the situation regarding the publication of driver values and routing factors in these six countries more closely:

### **1) Ireland**

Eircom<sup>6</sup> does indeed publish route factors, but by no means all its significant driver values. The reason for publication of routing factors is, in CBL' view, that Eircom provides wholesale services to other operators for which it has been designated with significant market power. This does not apply to CBL.

### **2) France**

Like Eircom, France Télécom<sup>7</sup> publishes route factors, but hardly any driver values. Like Eircom, France Télécom provides wholesale services to other operators for which it has been designated with significant market power and that involve the use of essential facilities. Again, this does not apply to CBL.

### **3) Italy**

Telecom Italia<sup>8</sup> does not publish its route-factors or other driver values. They are explicitly omitted in the public version of its separated accounts<sup>9</sup>. Telecom Italia has been designated with SMP in a range of wholesale markets.

### **4) Jamaica**

Regulatory Accounts have been produced since 2007/8 but have never been published by Cable and Wireless<sup>10</sup> has been designated with SMP in a range of wholesale markets in Jamaica.

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<sup>6</sup> Eircom Group LTD (aka "eircom") is a fixed, mobile and broadband telecommunications company in the Republic of Ireland, and a former state-owned incumbent. It is currently the largest telecommunications operator in the Republic of Ireland and operates primarily on the island of Ireland.

<sup>7</sup> France Télécom S.A. is the main telecommunications company in France and one of the largest in the world. It provides fixed, mobile and broadband telecommunications services.

<sup>8</sup> Telecom Italia. is the largest telecommunications company in Italy. It provides fixed, mobile and broadband telecommunications services.

<sup>9</sup>[http://www.telecomitalia.com/content/dam/telecomitalia/documents/Investitori/Contabilita\\_Regolatoria/2009/TabellaContabilitaRegolatoria2009.pdf](http://www.telecomitalia.com/content/dam/telecomitalia/documents/Investitori/Contabilita_Regolatoria/2009/TabellaContabilitaRegolatoria2009.pdf), for example page 62.



## 5) Guernsey

The incumbent fixed and mobile operator Cable and Wireless<sup>11</sup> publishes route factors but no further driver values<sup>12</sup>. Cable and Wireless has been designated SMP in a range of wholesale markets in Guernsey.

## 6) Malta

According to an interview CBL has conducted with the Regulatory Authority of Malta there is no publication requirement as far as the accounts themselves or any driver values or routing factors are concerned. The publication obligation is limited to a “statement of compliance and of the audit results”<sup>13</sup>. The separated accounts of any operator have never been published.

The conclusion after a closer look at the countries included in the URCA’s benchmarking study is that in only eight out of the 26 countries surveyed SMP operators publish their separated accounts, not a single one in the Caribbean. All SMP operators with a publication obligation have significant wholesale operations and could discriminate between its own downstream operations and those of competing providers. However, they are comparable to BTC, which in addition enjoys an extremely rare monopoly in the mobile telephony business and thus an opportunity to cross-subsidise segments that are exposed to competition with monopoly profits.

Only the incumbent fixed line operators in three of these eight countries published route factors, which are effectively a driver that allocates costs from network elements to services. None of the operators in the surveyed countries published extensive operational statistics and driver values as CBL does in its regulatory accounts.

CBL would also like to further stress that it is currently required to provide significantly more information with a greater detail than required in the accounting separation and cost accounting guidelines (ECS13/2010). For instance, the guidelines only require a description of the driver values used, not the values of the drivers themselves. The requirement for comprehensive reporting and publication of driver values is, to CBL’s knowledge extremely rare even for heavily regulated fixed-line incumbents.

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<sup>10</sup> Cable and Wireless Jamaica is the largest telecommunications company in Jamaica. It provides fixed, mobile and broadband telecommunications services.

<sup>11</sup> Cable and Wireless Guernsey is the largest telecommunications company in Guernsey. It provides fixed, mobile and broadband telecommunications services.

<sup>12</sup> <http://www.surecw.com/download/default.asp?url=/guernsey/PDF/2010-11%20Regulatory%20Accounts.pdf>

<sup>13</sup> Malta Communications Authority: Accounting Separation and Publication of Financial Information by Undertakings having Significant Market Power in the Electronic Communications Sector, Report on Consultation and Decision - 20 July 2009, page 17



**Question 2: Do you agree with URCA's proposal that an SMP licensee be required to publish its regulatory (separated) accounts on its website within eight months after the end of the relevant financial year?**

Notwithstanding our fundamental objection, CBL believes that publication of regulatory accounts by any SMP licensee with a regulatory accounting obligation is feasible within nine months after the end of the relevant financial year. In CBL's case an additional month for both submission and publication of its regulatory accounts would help to relieve the already significant strains the regulatory accounting obligation puts on a relatively small organisation. It should also be noted that CBL is one of the smallest organisations in the world with a regulatory accounting obligation. Collectively the internal and external costs and time required in dealing with regulatory obligations represent a significant proportion of net income.

**Question 3: Do you agree or disagree with URCA's proposal that an SMP licensee be required to publish and maintain its annual regulatory (separated) accounts on its website for a period of not less than three years?**

CBL believes that an SMP licensee with an obligation to produce regulatory accounts and with an obligation to publish at least parts of its regulatory accounts, should maintain the documents on the website for a period of one year. In the alternative the requirement to maintain the documents should be a maximum of 3 years.

**Question 4: Should SMP licensees be required to provide evidence to support a contention that publication of regulatory accounts would harm legitimate commercial interests? If so, what sort of evidence should be required?**

CBL believes that an SMP licensee with an obligation to produce regulatory accounts and with an obligation to publish at least parts of its regulatory accounts should justify any omissions in the published version of its accounts. However, it is extremely difficult if not impossible to present conclusive evidence that publication of certain information contained in the regulatory accounts would harm legitimate commercial interests. Any attempt at finding such evidence and going through the evaluation process of the presented evidence would be both, costly and time consuming and possibly leading to delays in publication. Hence, we propose URCA act on a basis of reasonableness when it evaluates requests for omission of commercially sensitive information. We propose URCA base its assessment of reasonableness on precedents or benchmarks from the countries it has included in the benchmarking exercise which its consultation document ECS 21/2011 makes reference to.

**Question 5: Do you agree with URCA's proposal that the independent auditors' opinion should include:**





- **The conclusion of the auditor;**
- **All identified irregularities;**
- **Recommendation made by the auditor; and**
- **A detail description of the verification methodology utilized by the auditor.**

CBL believes that an SMP licensee with an obligation to produce regulatory accounts and with an obligation to publish at least parts of its regulatory accounts should include the publication of the independent auditor's opinion.

It seems reasonable that all identified material irregularities should be published. Individually and collectively immaterial irregularities should not be made public as they may be misleading. Disclosing immaterial irregularities could lead to increased audit costs. If URCA wishes to focus on immaterial irregularities, it should provide a clear line of argument including examples of how the publication of immaterial irregularities would support the achievement of its policy objectives and justify the potential cost incurred.

In the event of a requirement to publish, CBL agrees that material recommendations made by the auditor should be disclosed. If URCA wishes to focus on immaterial recommendations, it should provide a clear line of argument including examples of how the publication of immaterial recommendations would support the achievement of its policy objectives and justify the potential cost incurred.

CBL disagrees that a detailed description of the verification methodology utilized by the auditor should be published. It is not a requirement for statutory accounts and according to CBL's regulatory accounts auditor, if imposed in these circumstances may lead to increased costs depending on the definition of "detailed". It is unclear why URCA believes that the reporting requirements for the auditors should be higher in the case of regulatory audits as compared to statutory audits. If URCA insists on a detailed description of the verification methodology utilized by the auditor, it should provide a clear line of argument including examples of how the publication of such information would support the achievement of its policy objectives and justify the potential cost incurred. Furthermore, CBL believes it is important to define the term "detailed" in this context and would be grateful if URCA could cite couple of examples of such a "detailed description of the verification methodology utilized by the auditor" for companies of a comparable turnover to CBL's as opposed to some of the largest telecommunications conglomerates of the world.

### **Conclusion**

We believe our cogent analysis should convince URCA that the publication of CBL's regulatory accounts will not further any objectives and there will be little if any corresponding benefit to competition or consumer. CBL accepts that in respect of BTC



the absence of relevant and timely information, non-SMP licensees may not be able to understand the derivation of wholesale costs or be certain that transfer prices are applied in a non-discriminatory manner and therefore there are significant competition benefits in requiring BTC to publish. In respect of the independent auditor's opinion, the publication should include the conclusion of the auditor, and any material irregularities or recommendations. The requirement for a detailed description of the verification methodology seems onerous, vague and superfluous.

Respectfully Submitted

A handwritten signature in cursive script that reads "Judith Smith". The ink is grey and the signature is written in a fluid, connected style.

Judith Smith  
Legal Counsel

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