



# **Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) under Section 119 and Schedule 5 of the Communications Act 2009**

## **Statement of Results and Final Decision**

**ECS 01/2013**

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**UTILITIES REGULATION & COMPETITION AUTHORITY**

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## 1. Introduction

The Utilities Regulation and Competition Authority (URCA) issues this Statement of Results and its Final Decision (ECS 01/2013) in relation to the universal service obligations (USOs) entrusted to the Bahamas Telecommunications Company Ltd. (BTC) and Cable Bahamas Ltd. (CBL) under section 119(1) and Schedule 5 of the Communications Act (“Comms Act” or “the Act”).

This document follows URCA’s consultation document (ECS 12/2012) on URCA’s proposed “Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) under Section 119 and Schedule 5 of the Communications Act 2009”<sup>1</sup>.

URCA received responses to its consultation from two respondents<sup>2</sup>:

- BTC; and
- CBL - including its affiliates Caribbean Crossings Ltd. and Systems Resource Group Limited.

URCA published these responses on its website at [www.urcabahamas.bs](http://www.urcabahamas.bs) on 5 July 2012.

URCA has prepared this Statement of Results which provides URCA’s response to the substantive comments made by BTC and CBL.

URCA wishes to thank the respondents for their constructive comments and their continued involvement in URCA’s consultation on the framework for the clarification and implementation of Existing Universal Service Obligations (USO).

### 1.1 Structure of the remainder of this Document

This document is structured as follows:

Section 2 sets out URCA’s response to the comments received on some legal and policy considerations.

Section 3 sets out URCA’s response to the comments received on the scope of the consultation and its preliminary decisions.

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<sup>1</sup> This consultation was published on 30 March 2012 on URCA’s website.

<sup>2</sup> The closing date for submitting responses to the consultation was 29 June, 2012.

Section 4 sets out stakeholders responses to the questions raised in the consultation document

Section 5 sets out the next steps to be undertaken by URCA in dealing with a number of outstanding aspects of its universal service framework.

Annex A lists the consultation questions and the final decisions taken thereon by URCA.

## **2. URCA’s response to comments on legal and policy considerations**

In consultation ECS 12/2012 URCA set out its understanding of its duties in relation to maintaining universal services in the electronic communications sector.

Some stakeholders have expressed reservations about URCA’s interpretation of the parts of the Act related to universal service, and about the Act itself and the resulting approach taken by URCA. These comments concern primarily the legal interpretation by URCA of various official documents. Three main groups of concerns have been raised and are discussed in turn in this chapter:

- Section 2.1: The ability of URCA to implement the transitional USO provisions
- Section 2.2: The extent to which URCA meets the requirements of the ECSP
- Section 2.3: The potential for URCA to take a more effective role in supporting universal service provision, rather than clarifying and implementing existing USOs.

### **2.1 Ability to implement the transitional USO provisions**

CBL claimed that URCA cannot implement the transitional USO provisions as drafted in the Comms Act because of inconsistencies in the Comms Act when compared to the Comms Bill<sup>3</sup> and the ECSP.

CBL is of the view that URCA’s clarification of the “existing USO obligations” is, in the context of the consultation, a reconstruction of the existing USOs since CBL argues that the provisions in question contain material inconsistencies, ambiguities and conflicting requirements that cannot be implemented “as is”<sup>4</sup>, in particular in relation to the scope of the USO entrusted to CBL –

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<sup>3</sup> The Communications Bill, 2009

<sup>4</sup> CBL commented that the transitional provisions of the Comms Act differed markedly from the corresponding provisions of the Comms Bill that was commented on by the industry prior to it being tabled in Parliament. CBL’s example, in this regards, was that the Comms Bill made no reference to a requirement on CBL to provide basic television service to the entire population of The Bahamas nor was there an affordability obligation on CBL for basic television service. CBL then stated that the transitional provisions in the Comms Bill reflected the basic television service, voluntarily agreed to by CBL and as contained in the MoU between CBL and the Government (i.e., the provision of “basic television services in specified locations”, namely to 16 designated islands). However, CBL noted that in the MoU the number of designated islands to receive Basic Television services were 13. CBL further stated that contrary to the internet USO provision of the Comms Act, the Comms Bill did not contain a USO internet obligation on CBL. CBL argued that the reference to basic internet service in the Comms Bill meant the provision of internet connection capable of 56kbps free of charge to nine specified institutions or types of institutions.

CBL stressed that the transitional provisions of the Comms Act are inherently flawed and cannot be rectified by URCA. In CBL’s opinion, the crux of the statutory problem is that the provisions of s. 119 of the Comms Act conflicts in material ways with those set out in Schedule 5, even though both provisions are meant to be read together. Whilst

namely TV and internet. CBL believes that it is beyond “URCA’s authority to attempt to resolve what CBL describes as irreconcilable internal inconsistencies<sup>5</sup>, anomalies in the text of the transitional USO provisions of the Comms Act and inconsistencies and anomalies between the legislative text and the Government’s published ECSP<sup>6</sup>”.

URCA is not in a position to comment on the reasons why Parliament made the changes to the Comms Bill to which CBL refers. However, URCA does not believe that those changes have any impact on URCA’s implementation of the existing USOs “as is”. Rather, it is URCA’s view that:

- The transitional provisions on USO as set out under Part XIX of the Comms Act refer to the maintenance of those provisions until such time as URCA has made determinations of universal service obligations (USOs) under s. 41 of the Comms Act and designations of universal service providers (USPs) under s. 42(3) of the Act which would then supersede any decisions made under s. 119(1) (and by extension Schedule 5). URCA has reviewed the existing universal service provisions in the Act and believes that at this stage the achievement of the current ECS policy objectives would most efficiently be achieved by URCA taking steps to ensure adherence by the designated USPs to the obligations specified in s. 119(1) and Schedule 5. To this end and as part of this consultation, URCA engaged both CBL and BTC to assess the current status of their respective USOs specified under s. 119(1) and Schedule 5 of the Comms Act. URCA will also assess the extent to which any parts of those obligations remain unmet. This engagement with

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section 119 includes an “affordability” principle in respect of basic television services, Schedule 5 contains no reference to “affordable basic television services”. Instead, Schedule 5 only speaks to provision of “... *basic television services to all populated areas and specified institutions*”. CBL contends that Schedule 5 makes the transitional USO applicable to CBL, whereas s. 119 specifies the list of potential services that a licensee may be required to offer on a transitional basis, subject to a ministerial determination on USOs under Part VII of the Comms Act. It is CBL’s view that under general rules of statutory interpretation, Schedule 5 would be subjugated to s.119; however, in this particular case the opposite is true because Schedule 5 imposes the specific obligation on CBL. CBL concluded that the narrowest interpretation of the obligation may be reasonably applied to basic television service and the affordability requirement should not be omitted.

CBL also highlighted what it considered an important discrepancy between s. 119 and Schedule 5 in relation to CBL’s internet obligation. CBL contrasted s. 119(1)(b) and (c) with Schedule 5(1)(b)(ii) and (iv). The former defines CBL’s internet obligation as “affordable basic dial-up services to all populated areas” and “...to specified institutions”, while the latter defines the obligation as “internet services to all populated areas” and “internet service free of charge to specified institutions.” CBL posited that in common with CBL’s basic television services, the provision of basic dial-up service to populated areas would not be subjected to an “affordability” test. Additionally, CBL argued that it could be inferred from s. 119 that the type of “internet” obligation to be imposed on CBL by Schedule 5 should be dial-up which CBL is not equipped to provide and it is therefore difficult to see how this obligation could be applied to CBL in any meaningful way.

<sup>5</sup> Between s. 119 of the Comms Act and Schedule 5 and this in relation to the affordability requirement upon USO basic TV.

<sup>6</sup> CBL finds that the provisions of s.119 and Schedule 5 of the Comms Act are incompatible with the ECSP.



operators will enable URCA to make informed decisions regarding the ongoing implementation and monitoring of the existing USOs.

- The 'omission' of "internet services" in s. 119(1) of the Comms Act, does not affect URCA's ability to enforce the USO on internet services. URCA cannot refuse to give effect to the clear words in Schedule 5(1)(b)(ii) and (iv) (i.e., imposition of a USO of internet services on CBL) simply because they appear to be limited by the heading of Schedule 5 or s.119 and the definition of the purpose of Schedule 5 contained in s. 119(1) of the Comms Act. Simply stated, the case law supports URCA's view that the Comms Act is inclusive of Schedule 5, and the current USOs are what are stated in s. 119(1) AND Schedule 5. URCA considers that its position on the effect and interpretation of s. 119(1) and Schedule 5 of the Act is also reaffirmed in the provisions of s. 11(2) of the Interpretation and General Clauses Act [Ch. 2] which provides that "*Every schedule to or table in any Act and any notes to such schedule or table shall be construed and have effect as part of such Act*".
- The omission of an "affordability" requirement in Schedule 5(1)(b)(ii) of the Comms Act does not preclude URCA from imposing such a requirement on CBL. URCA considers that Schedule 5(1)(b)(ii) cannot be read in isolation but must be read in conjunction with section 4(b)(i) and section 119(1) of the Comms Act<sup>7</sup> and Paragraphs 38 and 39 of the ECSP.<sup>8</sup> URCA's position is further reinforced by the "affordability" requirement of designated universal service<sup>9,10</sup> is a central tenet of any Universal Service Policy and Regulations. It is URCA's view therefore that whether "affordability" is mentioned

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<sup>7</sup> Section 119(1) of the Act, stipulates that "... the existing licensees in Schedule 5 shall be designated as universal service providers ... in respect of [certain specified] universal service obligations". Schedule 5 of the Act commences by saying that "For the purposes of this Act, ...." which URCA considers refers back (inter alia) to s. 119(1) where all of the specified universal service obligations are required to be "affordable" except in s. 119(1)(c) regarding basic dial-up internet services to specified institutions. That 'omission' is cured in Schedule 5(1)(a)(ii) and 5(1)(b)(iv) where internet services to specified institutions, both dial-up and otherwise, are required to be "free of charge".

<sup>8</sup> Paragraph 38 of the ECSP stipulates that "It is important that as the markets are liberalised and competition increases, the Government's social objectives with respect to electronic communications are safeguarded. This is typically achieved through a Universal Service Obligation (USO) which can address both geographical reach of services and the nature and pricing of services to be provided. The Government has defined the scope of Universal Service Obligations in the Communications Act. URCA is responsible for the enforcement of the Universal Service Obligations as well as setting up any funding arrangements necessary". Paragraph 39 of the ECSP stipulates that "The Government has identified the need to impose USOs in the telecommunications markets and has designated BTC as the USO provider for telecommunications services and CBL as the USO provider of Pay TV and Internet services".

<sup>9</sup> The other two tenets are "availability" and "accessibility".

<sup>10</sup> This is illustrated in the InfoDev ICT Regulatory Toolkit Module on Universal Access which CBL cited in its response to the consultation. That toolkit identifies affordability as one of "The three hallmarks of UA and US are: .... Affordability: the service is affordable to all citizens."

explicitly or implicitly, an affordability requirement is integral to Universal Access and Service including those entrusted to CBL under the Comms Act.

## **2.2 Meeting the requirements set by ECSP**

CBL claims that URCA has not met the requirement set by the ECSP at paragraphs 53 and 55. According to CBL, a result of material changes to the Comms Bill required URCA to draft Regulations and have those Regulations considered and approved by the Government prior to the implementation of the USO policy. In CBL's view URCA failed in this public consultation to develop a record for, or propose draft Regulations on, USO for Government's approval as one of the next steps following the consultation. CBL argues that this omission in the consultation document breaches the policy requirements.

In URCA's opinion, CBL's interpretation and comments in relation to paragraphs 53 and 55 of the ECSP are premature. Paragraph 41 of the ECSP states that *"In order to deliver the benefits of the new regime as soon as possible, the Government considers that the following tasks **ought** to be addressed as a matter of priority and within the period of this Sector Policy"* [emphasis added]. These priorities were intended to include Regulations as stipulated in Paragraphs 53 and 55 of the ECSP. However, URCA considers that it can only implement the Regulations mentioned in paragraphs 53 and 55 of the ECSP after it has first ascertained the extent to which the designated USPs are presently meeting their interim obligations imposed under s. 119(1) and Schedule 5 of the Comms Act. URCA has not yet been able, either as a matter of priority or within the period of the 2009-2012 Sector Policy, to address the issue raised by CBL. As stated in Paragraph 38 of the ECSP, *"The Government has defined the scope of Universal Service Obligations in the Communications Act. URCA is responsible for the enforcement of the Universal Service Obligations as well as setting up any funding arrangements necessary"*. URCA is currently endeavouring to comply with that responsibility through the provisions contained in the Comms Act, and consequently, in URCA's view, the provisions in Paragraphs 53 and 55 of the ECSP on Regulations must only be read in conjunction with the provisions set out in s. 119(2) of the Comms Act.

URCA considers that the only matter on which the Comms Act contains *"the Government's USO policy"* is in respect of the designation in the Comms Act of specific providers on whom specific obligations have been placed. Otherwise, the relevant provisions of Part VII of the Comms Act set out various powers and mechanisms which URCA might use to achieve fulfilment of the universal service obligations after it has made the determinations and designations specified in s. 119(2). The only reference to *"regulations"* affecting universal service is contained in s. 44(1) of the Comms Act and this relates to the universal service fund, where the section states that *"URCA may establish by determination or regulation a universal service fund or universal service funds..."* All other provisions relating to universal service are specifically required by law to be

“determined” which must, in accordance with s. 99(1)(b) of the Comms Act, follow the procedures set out in sections 99 through 102 of the Comms Act.

The imposition of an interim pay television and internet service obligation on CBL is reaffirmed in the ECSP at paragraph 39 thereof that *“The Government has identified the need to impose USO in the telecommunications market and has designated ..... CBL as the interim USO provider of Pay TV and internet services”*.

### **2.3 More effective roles for URCA**

CBL submits that rather than seek to clarify and implement transitional provisions, URCA should have considered the following alternative roles:

- URCA should prepare draft Regulations for the Government’s consideration and approval prior to implementation. This option arises on the basis that the Government has already set out its USO in the transitional provisions of the Comms Act;
- URCA should exercise its powers under the Comms Act to determine that a licensee or licensees are required to meet all or some of the USOs [s.42(2)] and to relieve designated licensees of any obligation [s.42(5)]. CBL argued that URCA should follow good regulatory practice and provide a clear rationale for the decisions it makes and take into account international precedents especially where many aspects of the transitional provisions on universal service are unprecedented;
- URCA should assume an advisory role and brief the Minister on the anomalies and legal inconsistencies in the Comms Act. CBL stated elsewhere that the Minister, in accordance with s. 41(2) and (3) of the Comms Act, has the power to modify the universal service policy, including specifying that ‘services shall no longer constitute the subject of universal service obligations’ after taking account of economic and technical feasibility;
- URCA should utilize this consultation to engage industry participants and seek clarification and legal changes. This would allow for a proper analysis, inclusive of cost of the universal service policy which would thereafter inform the new forward looking sector policy which needs to be enacted in 2012. CBL further stated that, in the revision of the new ECSP, URCA could take account as a starting point the principles applied by the European Union (EU) Universal Service Directive (USD) and consider application of the two tests:
  - In light of social, economic and technological development, has the ability to use the service become essential for social inclusion; and

- Are normal commercial forces unable to make the service available for all to use?
- URCA should have conducted its USO assessment of individual USPs prior to the public consultation. This would have more likely been focused and produced a reasonable document for discussion.

URCA differs in view to CBL on the above suggestions:

- Fulfilment of s. 41(2), s. 41(3), s.42(2) and s. 42(5) of the Comms Act only arise in URCA’s view after making the determinations and designations stipulated in s. 119(2) of the Act that supersede any decision made in s. 119(1) and by extension Schedule 5 of the Act;
- Implementation of s. 119(1) and Schedule 5 of the Comms Act necessitates that URCA first assesses, *a priori*, the extent to which USPs are presently meeting their obligations. It is URCA’s view that this assessment does not need to precede the consultation. Further URCA must undertake its assessment, and/or conduct a comprehensive review of existing USOs before it can make the determinations and designations stipulated in s. 119(2) of the Act and/or issue any orders or regulations under s. 42(5)(b) of the Act.
- Going forward, any review followed by modifications or revisions to the existing universal services by URCA will be guided by Part VII of the Comms Act requiring the Minister to take into account the economic and technical feasibility of the universal service obligations. While URCA is not averse to the inclusion of the EU’s twin test (i.e., “majority use test”<sup>11</sup> and the “market failure test”), URCA understands that the application of these tests would be relevant in determining whether the defined universal service(s) would be subject to funding as a result of market failure as opposed to determining whether to designate the service(s) as a universal service. Going forward, URCA will ensure that appropriate best practice approaches are employed.

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<sup>11</sup> Richard A. Crawley, in “Universal Service: specific services on generic networks – some logic begins to emerge in the policy area”, has rephrased these two test as:

- Are specific services available to and used by a majority of consumers and does the lack of availability or non-use by a majority of consumers result in social exclusion, and
- Does the availability and use of specific services convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific service are not provided to the public under normal commercial circumstances?

### **3 URCA's response to comments on the scope of consultation ECS 12/2012**

URCA's consultation is on a framework for the implementation and monitoring of the government's policy on Universal Service (US) in The Bahamas. In guiding the development of that framework, URCA had regard to the Comms Act and the ECSP, notably:

- Section 119(1) and Schedule 5 which designates the USOs and USPs;
- Paragraph 38 of the ECSP whereby *"The Government has defined the scope of Universal Service Obligations in the Communications Act. URCA is responsible for the enforcement of the Universal Service Obligations as well as setting up any funding arrangements necessary"*;
- Paragraph 39 of the ECSP whereby *"The Government has identified the need to impose USOs in the telecommunications markets and has designated BTC as the USO provider for telecommunications services and CBL as the USO provider of Pay TV and Internet services"*; and
- Paragraph 54 of the ECSP which requires
  - (1) *"that no person in The Bahamas who today benefits from electronic communications services provided under current USO and similar arrangements is left without service, and*
  - (2) *that the services offered are no less than what is currently provided."*

As alluded to in the section 2, URCA wishes to stress that URCA is not seeking to alter, amend, expand or modify the existing USOs and the designation of USPs specified under section 119(1) and Schedule 5 of the Comms Act. Instead and as clearly stated in the consultation document, URCA is seeking to:

- Clarify the US obligations (where applicable) to ensure effective implementation;
- Provide core principles and concepts for calculating the net cost of the USOs and determining whether the net cost of the USO, if applicable, is an unfair financial burden upon the USPs; and
- Disseminate and seek comment on mechanisms for funding the net cost of the universal service similar to the procedures set out.

In the rest of this Section 3, URCA responds to the comments made in relation to the scope of its consultation, its content and its preliminary decisions. Note that these general comments should be read in conjunction with URCA's comments on the responses provided to the specific questions posed in the consultation.

- Section 3.1 considers comments made on whether regulatory intervention is necessary
- Section 3.2 considers whether market forces can be left to deliver universal services
- Section 3.3 considers possible exemptions from the USO
- Section 3.4 examines the issues around there being two USPs for internet services
- Section 3.5 considers the imposition of a USO for a Basic Television Service
- Section 3.6 considers the availability of the universal services to all populated areas
- Section 3.7 deals with issues around the financing of the universal service.

### **3.1 Whether regulatory intervention is necessary**

BTC states that the consultation has omitted a discussion as to whether regulatory intervention is necessary to ensure the provision of services on a universal basis.

BTC states the importance for URCA to depict the current state of play in relation to the provision of universal service of telecommunication services in order to find out whether there is an Access Gap. An access gap would exist if the current provision of services does not fulfil the universality concept USOs try to achieve. This can be identified with a thorough data gathering by URCA. If this exercise reveals there is no such gap, BTC concludes that regulatory intervention may not be necessary. If the exercise finds the presence of an access gap, BTC argues, regulatory intervention may still not be necessary as other mechanisms might fill the gap.

CBL makes a similar comment, making reference to the European policy<sup>12</sup> which requires Member States to consider whether the market is adequately providing designated services before a universal service obligation is imposed.

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<sup>12</sup> "The aim is to ensure the availability throughout the Community of good-quality publically available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market". Article 1, paragraph 1, of the EU USD.

### **URCA's response**

URCA reiterates that the existing USOs entrusted on BTC and CBL continue in effect until such time as those obligations are amended, repealed or superseded by other regulatory or policy decisions made pursuant to s.41 and s.42 of the Comms Act. As part of any future review, URCA will examine the existence of the "access gap". For this reason, URCA consider it premature to make an *a priori* determination as to whether regulatory intervention (inclusive of market based and/or tradable options) is necessary at this time until URCA has obtained all relevant information.

### **3.2 Market forces fulfilling the provision of a universal service**

CBL argues that URCA has not given sufficient consideration to market forces fulfilling the provision of services on a universal basis.

CBL argues that URCA is required to consider whether market forces may be sufficiently able, currently or within a reasonable period of time, to achieve the USO as a first step in the implementation of the universal service and this as specified in the ECSP and supported by s. 5 of the Comms Act.

CBL considers that URCA did not undertake this first step effectively in the consultation document. In particular, CBL contends URCA did not undertake an assessment of whether market forces are currently or can be expected, in a reasonable time period, to meet the objectives for which the interim USOs were established or to retain the interim as existing<sup>13</sup>.

### **URCA's response**

URCA is cognizant of its statutory obligations under s. 5 of the Comms Act. As part of any future review or examination of the scope of universal service URCA will consider market forces and the theoretical framework presented on page 16 of CBL's response regarding the provision of the existing USO. For the purposes of this consultation, USPs are already determined in Schedule 5, and the criteria for review of the scope of universal service going forward is clearly specified in s. 41 of the Comms Act. Both the existing USOs and USPs remain applicable until URCA has conducted a full review followed by the imposition of new requirements governing USOs.

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<sup>13</sup> CBL went on to cite the theoretical framework for universal service and access (US/UA) and commented that URCA should utilized that framework to (1) assess the current network reach and access; (2) assess the market efficiency gap; (3) identify the smart subsidy zone; and (4) identify the true access gap.

### **3.3 Exemptions from the USO**

BTC notes that there was no discussion in ECS 12/2012 on exemptions to a USP's obligation in providing USO services. BTC refers to the UK framework for deciding whether an exemption is to be granted<sup>14</sup>. CBL made a similar point, although in relation to the removal of USO services if the market provides for such service. It made reference to such possibility under the EU directive, and gave examples of EU member states having withdrawn some designated services from the USO<sup>15</sup>.

#### **URCA's response**

URCA notes that the specific exemption conditions articulated by BTC are not contained in either the Comms Act or in BTC's Individual Operating Licence (IOL). As alluded to in the section 2, URCA wishes to stress that URCA is not seeking to alter, amend, expand or modify the existing USOs and the designation of USPs specified under section 119(1) and Schedule 5 of the Comms Act. In that regard, URCA is as yet unconvinced that any exemption is appropriate based on the knowledge and information in URCA's possession. URCA will continue to monitor, review and consider whether exemptions under 42(5)(b) are appropriate.

### **3.4 Two internet USPs**

CBL expresses doubts about the feasibility and practicality of designating two internet service USPs, both required to serve all populated areas of The Bahamas.

In CBL's view such an overlap in geographic scope is likely to result in costly duplication of facilities and argues that URCA has failed to provide the rationale or explain how the duplicated Internet service USO requirement would be implemented and administered in an efficient manner.

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<sup>14</sup> Condition 5.4 of British Telecom's License provides the conditions under which exemptions to BT's obligation would be considered and possibly granted.

<sup>15</sup> The exclusion of public payphones from USO in Austria, The Netherlands, Denmark, Sweden and The Czech Republic; the removal of the telephone directory inquiry service/and/or printed telephone directory from the USO in Ireland, Norway, Italy, Sweden, Germany, Denmark and The Czech Republic; and the exclusion of access and telephony services at a fixed location from the USO in Sweden and Germany. CBL also referenced Trinidad and Tobago, the Cayman Islands, British Virgin Islands, and ECTEL countries as regional island states that do not include payphones in their USO.



## URCA's response

### Statutory designation of two USPs

In URCA's view, s. 119(1) of the Comms Act imposes an internet obligation on both BTC and CBL, defining in Schedule 5 the technology to be implemented by BTC, but not for CBL. Therefore, under the current legislative framework, the technology and nature of CBL's USO internet service is left to be defined to ensure conformity with Paragraph 39 of the ECSP (i.e., "The Government ... has designated ... CBL as the USO provider of .... Internet services") and paragraph 54 of the ECSP (i.e., "... that the [internet] services offered are no less than what is currently provided"<sup>16</sup>).

The designation of more than one USP to provide the same USO is not unprecedented. URCA understands from its discussions with the Malaysia Communications and Multimedia Commission (MCMC) there exist in some regions of that country more than one designated USP for the provision of internet services and simultaneous dial-up and broadband internet service obligations.<sup>17</sup> In the United States of America (USA), where the subsidy framework under its 1996 Telecommunications Act targets customers (i.e., the subsidy goes to the eligible service provider that the customer chooses), there are areas served by multiple providers of universal service.<sup>18</sup> URCA is also aware that the 2011 Federal Communications Commission's (FCC) Universal Service Fund (USF) and Intercarrier Compensation (ICC) Transformation Order will pitch wireline and wireless carriers in the same serving areas to provide the designated US.<sup>19</sup>

### Duplication of Networks

The geographical overlap in the provision of internet services arises from the obligations entrusted under the Comms Act and the ECSP to both CBL and BTC. The net cost of the internet USO to each USP will be considered individually and independently of the provision of the service by the other USP in the same area, if applicable. The details of the approach taken by URCA will be dealt with separately in the forthcoming guidelines on how to calculate the net cost of the USO.

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<sup>16</sup> Also see below URCA's Final Decision on Question 5 of the consultation document.

<sup>17</sup> The MCMC explained that designated USPs are required to comply with the minimum download speed of 256kbps for broadband access services and are required to comply with the approved universal service plan.

<sup>18</sup> See Mark. A. Jaimson. Estimating Costs for Universal Service Obligation. 1997. Presented at the Telecommunications Policy Research Conference. University of Florida.

<sup>19</sup> See KPMG. "Understanding the Impact of the Universal Service Fund and Intercarrier Compensation Transformation Order". Available online at <http://www.kpmg.com/us/en/issuesandinsights/articlespublications/pages/universal-service-fund-intercarrier.aspx>.

### 3.5 Basic Television Services under the scope of the USO

CBL believes that it is inappropriate to include basic cable television services under the scope of the USO.

In CBL's view the provision of national television services is achieved through a public service broadcasting policy rather than a USO. The requirement to satisfy the need for Bahamian content should be the responsibility of the Broadcasting Corporation of The Bahamas (BCB)<sup>20</sup>. CBL observes there is no international precedent where television-like services are under the scope of the USO.

Notwithstanding the above, CBL stresses that it has expended considerable financial resources to roll out Basic Television Services to remote and sparsely populated areas (i.e., smaller Family Islands), which it began doing in cooperation with BTC through a Memorandum of Understanding (MoU) between CBL, BTC and the government<sup>21</sup>. Efforts undertaken pursuant to that MoU have led to substantially increased access to television services in a number of areas in The Bahamas.

CBL argues that the policy driver for a Basic Television Services was to reach previously unserved areas and that it was not the objective of the Basic Television USO service to require CBL to provide a six channel service in areas where consumers already have access to PayTV services. CBL notes that URCA indicated in ECS 12/2012 that the SuperBasic package meets the USO requirements for Basic Television Services.

However, CBL emphasizes that SuperBasic should not be confused with universal service and the pricing for the SuperBasic service should not be subject to a cost based pricing analysis or to an "affordability" test. CBL further contends that there is no legal or public policy basis for URCA to designate the SuperBasic package as a USO service on those islands where that service is currently available. This is because such a designation would be incompatible with s. 4 of the Comms Act (i.e., promoting affordable access).

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<sup>20</sup> CBL referenced St. Vincent and the Grenadines which is similar to the topology of The Bahamas, and where the quasi-government Broadcasting Corporation operates one television and five (5) repeater stations to provide near total coverage, approaching 95%, of that multi-island state. CBL further stated that the project is partially government funded.

<sup>21</sup> Memorandum of Understanding: BTC and Cable Bahamas dated July 4, 2008.

## URCA's response

URCA notes and commends CBL's efforts to roll out Basic Television Services to remote and sparsely populated areas (Family Islands) of The Bahamas under the MOU.

URCA makes a distinction between the provision of a national television service from that of a public broadcasting service. The former is making the broadcast transmission ubiquitously available through coverage requirements (population and/or geographic); the latter is primarily concerned with the type and variety of content that is to be broadcasted. URCA accepts that in some jurisdictions, inclusive of the Caribbean, national television service has been achieved through the inclusion of population and/or geographic coverage requirements as part of the license conditions for terrestrial free-to-air television broadcasters (public service broadcasters or otherwise).<sup>22</sup> In The Bahamas, however, no such requirement is imposed on the current free-to-air broadcasters, inclusive of the BCB.<sup>23</sup>

URCA notes that CBL's off-air coverage is only available in those islands and cays that are not currently served by CBL's unidirectional coaxial and bi-directional Hybrid-Fiber Coaxial (HFC) networks. URCA understands that under the current MoU between CBL, BTC and the Government of The Bahamas, CBL utilizes BTC's infrastructure, at no cost to CBL, to provide off-air coverage free of charge to residents in the Family islands not served by CBL's unidirectional coaxial<sup>24</sup> and bi-directional HFC<sup>25</sup> digital networks.

As previously stated, URCA is not in a position to comment on either Parliament's intent for establishing the Basic Television Service USO or on the Government's motivation for the MoU. URCA reminds CBL that the Comms Act is very clear about CBL's USO, which is the provision of Basic Television Services comprising a multichannel TV service of six channels to *all populated areas and specified institutions* in The Bahamas. URCA does not consider the wording of the provision leaves room for CBL's argument that the Basic Television Service USO was specifically designed to reach islands that are not served by CBL's unidirectional coaxial and bi-directional HFC networks. URCA further considers that there are legitimate public policy reasons (as stated in Paragraphs 38 and 39 of the ECSP) to ensure that all persons in The Bahamas are able to

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<sup>22</sup> URCA has been advised that the coverage requirement (population and/or geographic) for free-to-air broadcasters (traditional ICTs) and cable TV broadcaster (ICTs) in other Caribbean countries is contained in the IOL for these broadcasters which are not in the public domain. URCA therefore cannot replicate these requirements in this consultation document.

<sup>23</sup> There have not been any indications that this situation is likely to change in the near future.

<sup>24</sup> These islands are Andros, Bimini, Berry Island, Great Exuma, Great Inagua, San Salvador and Long Island.

<sup>25</sup> These islands are Abaco, Eleuthera, Grand Bahama and New Providence.

receive and benefit from television services. URCA therefore considers the USO requirement, as stated in the Act, to be applicable to The Bahamas. URCA notes that CBL does not currently offer a basic six-channel package to customers in New Providence and other Family Islands (e.g., Abaco, Andros, Berry Islands, Bimini, Eleuthera, Exuma, Grand Bahama, Inagua, Long Island, and San Salvador), where CBL operates terrestrial cable TV infrastructures and services. In this instance, URCA reaffirms its stated position in the consultation, “that from the perspective of a minimum channel offering the SuperBasic/RevTV Prime package meets the requirements of the Basic Television Services USO requirement in the aforementioned islands”.

### **3.6 Availability of USO services to all populated areas**

CBL finds that the requirement of providing internet and cable basic television services to all populated areas is disproportionate and does not account for the current deployment of cable networks in The Bahamas.

CBL argues that in liberalized communications markets where, pre-liberalization, the telecommunication services were already largely made ubiquitously available by the USP under monopoly conditions, the post-liberalization focus was to ensure that existing services in rural and high-cost areas was not jeopardized by liberalization or the implementation of a “service maintenance” program as put by CBL. CBL contrasted this to liberalized communications markets which did not achieve ubiquitous telecommunications coverage pre-liberalization. In CBL’s view the post liberalization focus of universal service requirements in these communications markets was on “expansion of the network”<sup>26</sup>.

In CBL’s view the “service maintenance” program appears to be the primary objective of paragraph 54 of the ECSP.<sup>27</sup> Hence CBL argues that URCA’s consultation is debatable on a number of counts. First, CBL finds that URCA’s proposal includes a combination of both “service maintenance” and “network expansion” programs. Second, CBL argues that URCA does not appear to have conducted an assessment of the implications or desirability of network expansion into currently underserved areas (for example, in terms of cost, technical feasibility, relevance of the universal services, economic efficiency).

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<sup>26</sup> As for CBL’s “network expansion” programs, these are generally administered on a project-by-project basis whereby the USP was selected based on a voluntary competitive auction process that selected the least-cost competitive tender. CBL cited Chile, Peru, Columbia and the Dominican Republic as countries of the Latin American and Caribbean region that have implemented such an approach.

<sup>27</sup> That is the requirement that “no person in The Bahamas who today benefits from electronic communications services provided under current USO and similar arrangements is left without service, and that the services offered are no less than what is currently provided”.

CBL stated that its HFC network, which allows for the provision of broadband and cable television (CATV) services, is currently available on the four islands of New Providence, Grand Bahama, Abaco and Eleuthera. On the islands of Andros, Bimini, Berry Island, Great Exuma, Great Inagua, San Salvador and Long Island, CBL *only* provides cable television services via unidirectional CATV facilities. Provision of Internet services to the latter group of islands would involve upgrading and expanding the existing CATV facilities. Therefore to provide an internet coverage to all populated areas in The Bahamas would require CBL to expand its HFC network footprint to remote and sparsely populated islands and linking these islands together. This would be enormously costly and take years to complete. Mandating such a requirement would be contrary to the s. 5 of the Comms Act. CBL further noted that a publication by the Committee for the Privatization of BTC rejected a proposal to designate CBL as the USP for internet services. CBL states this decision was reached because of the considerable cost and duplication of facilities this would create, since BTC already had the infrastructure required to provide basic Internet services to remote areas of The Bahamas.

CBL finds therefore that consultation ECS 21/2012 goes well beyond an extension of the *status quo* and appears to be requiring CBL to expend large sums on the provision on an extended network and the new application of CBL's previous commitments. Such proposed extension did not consider the financial burden that would be placed on CBL and the time period that the additional build-out would take to ensure such service provision.

CBL proposes two solutions. First, the provision of internet might be via wireless technologies rather than any form of wireline facilities in low population density areas. Second, persons in sparsely populated areas would access internet services at a centre point, such as a community centre, rather than at their own home.

### **URCA's response**

URCA is aware that universal service policy is dynamic, time dependent<sup>28</sup> and country specific.<sup>29</sup> It therefore accepts CBL's argument regarding the different approaches to universal service policy in the EU, Canada and other industrialized countries, pre and post market liberalization.

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<sup>28</sup> Initially, the phrase universal service emerged in the telephone policy debates in 1907, to refer to the interconnection of the fragmented telephone systems at that time into a unified, non-fragmented service. The term has evolved over time to that of "universality" which includes shared access to basic telephony services (universal access) and a telephone in every home (universal service).

<sup>29</sup> The services included in universal service are often country specific and influenced by the technology available at that time. Historically, the universal service was confined by technology to Plain Old Telephone Service, offered via copper networks. The advancement in technology and the convergence offered by such advancements has resulted in a wide array of services into the universal service paradigm. In the ECTEL countries, public telephony services may be offered via fixed or mobile technology (see ECTEL Telecommunications Universal Service Guidelines, 2009) and

However, it is the clear intention of the Comms Act [at section 4(b)(i) read in conjunction with section 119(1) and Schedule 5] that where networks are not pervasive, regulatory intervention measures to achieve universal services in The Bahamas should incorporate both “network expansion” and “service maintenance” programmes. It is URCA’s view that the Comms Act, when read in conjunction with the ECSP, seeks to ensure that the specified universal services are available ubiquitously to all citizens and residents throughout The Bahamas.

URCA advises CBL that URCA, in the context of s.119 and Schedule 5, had due regard to the cost and benefit in the application and enforcement of this universal service regulatory measure. It is URCA’s view that the benefits to society of ubiquitous coverage far outweighs the cost; more so where the cost is borne by the industry in general and recouped through a fund established specifically for that purpose.<sup>30</sup>

URCA’s notes the statement in CBL’s submission that URCA should give consideration to wireless technologies for the provision of USOs, and in that regard URCA notes that CBL has access to significant quantities of radio spectrum which could be deployed toward achieving its USOs. Neither the Comms Act, nor URCA in its consultation document requires that CBL meet its US obligations by building out its HFC network. In fact, CBL should seek to ensure that its network expansion for its TV and Internet USOs utilize the most efficient technologies to provide the designated services,

URCA wishes to add that the obligation to provide services to all populated areas cannot be fulfilled solely by the provision of services to a community centre in sparsely populated areas, as suggested by CBL. As such, URCA cannot accept CBL’s proposal as it fails to comply with the provisions of both the Comms Act and the ECSP.

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narrowband and Broadband Internet and radio and television broadcasting (See presentation made by Sofie Maddens-Toscano, Managing Director, Pygma Consulting International LLC, at the ITU Conference in Libreville, Gabon, June 2012)

<sup>30</sup> URCA’s position is also amply supported by existing international experience which, premised on the universal service literature (See *InfoDev ICT Regulatory Toolkit Module on Universal Access*), focuses on the availability of communications networks to provision the defined universal services. As an example Article 1 of the EU’s USD requires Member States to ensure that the defined universal services are made available to all end-users in their respective territory, independently of geographic locale. The Common Market for Eastern and Southern Africa (COMESA) 2004 Policy Guidelines on Universal Service/Access aimed at expanding availability and accessibility of ICT services, while ensuring universal access to these services. Article 1(2) of the Economic Community of West African States (ECOWAS) Supplementary Act A/SA.6/01/07 on Universal Access/Service defines universal service as all citizens within the territory of the ECOWAS Member States having access to a basic group of services regardless of their geographic location. In the Caribbean TATT’s Universality Framework not only includes availability in its definition of universality but seeks to quantify service availability, while Section 2(1) of ECTEL’s 2009 Telecommunications Universal Service Guideline ensures the reasonable availability and affordability of basic and advanced telecommunications services, including voice telephony and Internet access.

### 3.7 Financing of Universal Services

CBL noted that the Consultation document did not review or consider alternative financing options for the Universal Service Fund (USF) other than a single approach involving the imposition of a surcharge on licensees and content providers to fund universal service. CBL argues that this is in contrast to s. 44(1) of the Comms Act which identified several approaches to universal service financing.

CBL commented that URCA needs to make an assessment of costs and implications of levying sector contributions for financing the USF and compare this to the relative costs and benefits of alternative approaches, including consideration of Government funding approaches. In CBL's view the imposition of sectoral and national funding, devoted to uneconomic areas and customers and unserved areas, would impose a combined and future burden on the sector which will result in a less productive ECS that will be less able to contribute to the general growth and productivity of The Bahamas.

CBL also expressed its concerns with the absence of any discussion in the Consultation document on tariff rebalancing for BTC's fixed telephony services prior to the consideration of the need for any form of subsidy mechanism for BTC's basic telephony services. CBL contended that without tariff rebalancing the risk arises that an ongoing and disproportional financial burden could be placed on the sector that creates inefficiencies, distorts market competition and has other negative consequences. As such, CBL suggested that URCA should seek to implement tariff rebalancing prior to the establishment of a USF.

CBL strongly opposed any USO funding mechanism that would contribute to any claimed access deficit by BTC and expressed strong concerns that any claim by BTC for access deficit may lead to an overstatement of the level of compensation.

Finally, in CBL's view any established USO programme and related funding mechanism should include:

- A full and proper assessment of the services to be included in the USO (EU's two test);
- An assessment of the technical and economic feasibility of fulfilling the USO;
- Consideration of the use of all available market and other financing mechanisms to support any established USO;
- Measures to keep to the absolute minimum funding level necessary to support an identified, eligible USO funding requirement;

- A regular review with the objective of reducing or eliminating any on-going funding requirement over time;
- Measures to ensure the program and funds are administered in a transparent, non-discriminatory and competitively neutral manner; and
- Measures to ensure the program and funding measures are designed to keep the associated regulatory burden on all parties to a minimum.

### **URCA's response**

URCA advises CBL that URCA has fully considered alternative financing mechanisms. URCA's consideration included, *inter alia* Smart Subsidies,<sup>31</sup> State Aid, Targeted Implicit Subsidy Obligation<sup>32</sup>, Tradable USO<sup>33</sup> and Franchising the USO<sup>34</sup>. URCA understands that approaches such as Smart Subsidies, Targeted Implicit Subsidy and Franchising typically require the establishment of a funding mechanism of some type, in order to ensure that various sources of funds (whether state, international donors or from monies appropriated from licensees) are separately accounted for and are used specifically for the purposes of universal service. As such, where URCA considers market based options relevant, URCA would most likely be required to establish a funding mechanism to support those options. URCA's approach in Section 6.6 of ECS 12/2012 was designed not to be overly prescriptive but rather to be sufficiently broad to allow for greater possibilities in the range of market based options, such that the designated USO and the chosen financing option are aligned to ensure competitive neutrality. In that context, URCA may apply specific rules or choose to waive such requirements. In so doing, URCA believes it can achieve the appropriate balance between promoting investment and innovation [s. 4(a)(ii)] and encouraging and promoting sustainable competition, [s. 4(a)(iii)] as required under the Comms Act.

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<sup>31</sup> A recurring grant provided to the operator requesting the lowest amount of subsidy or proposing the largest deployment, to expand the network to the underserved area and usually paid on delivery of services and not when the network is delivered.

<sup>32</sup> This approach, in a competitive industry structure, seeks to emulate the implicit subsidies typically used by monopoly carriers. Thus, a license to offer a profitable service is coupled with the obligation to serve an unprofitable region. The challenge is to match profitable and unprofitable regions in an optimal way

<sup>33</sup> This approach presupposes a limited number USO and designated service providers are permitted to trade the USO amongst themselves. The success of this approach hinges on the optimal timing of the implementation of the USO given that the deployment of infrastructure and the USOs transient in nature

<sup>34</sup> In this approach, the pre-defined universal service area is auctioned off to the provider requesting the least subsidy.



URCA acknowledges that there are several alternative ways to levy the contribution to the USF inclusive of universal service fees or access surcharges. From a policy perspective, the access surcharge is the imposition of an uplift or 'premium' to the access charge that competitors must pay to use the USP's facility, while the universal service fee is a lump-sum charge levied on all relevant markets and is used to finance the USO (i.e., a service and/or set of services).<sup>35</sup> URCA understands that both options are equivalent where there is no possibility of bypassing the USP's network and if that network constitutes an input which has to be used in fixed proportion (i.e., it cannot be substituted by other inputs). Thus, where bypass or input substitution is possible access surcharges may induce inefficiencies. URCA understand however, that welfare is highest under a universal service fee imposed across multiple services.<sup>36</sup> As such, URCA believes that a universal service levy should not be recovered through an access deficit charge. URCA's position is supported by the international experience which suggests that access deficit charges create economic distortions and dis-incentives and are being phased out in most countries where they were previously adopted.<sup>37</sup>

Regarding the fund for compensating the net cost of USO Basic Television Service, URCA is of the view that "direct to home" satellite providers should contribute to the fund. In that regard, URCA reminds all licensees of "Class Operating Licence Requiring Registration" that Condition 1.11.3 of their Licence required them to contribute to the universal service fund established by URCA in accordance with the Comms Act.

URCA disagrees with CBL that URCA's reference to EU precedents lead to a bias in URCA's approach. As URCA understands it there are two main approaches to determining the cost of universal service, namely, the profitability cost and welfare cost<sup>38</sup>. The approach specified in the Comms Act conforms to the profitability approach which requires, as part of the determination of Net Avoidable Costs, an assessment of the benefits both tangible and intangible to the USP. URCA also references the three-year EU/ITU-funded Harmonization of ICT Policies, Legislation and Regulatory Procedures in the Caribbean (HIPCAR) project which included intangible benefits in calculation of the net cost of universal service and the consideration on whether a universal service obligation represents an unfair burden on an undertaking (designated USP).

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<sup>35</sup> A universal service fee can also be imposed on a single service to finance the USO; however, this approach leads to the same market equilibrium as an access surcharge. (See Madet, Charles et al. 2004. "Funding Universal Service Obligations with an Essential Facility: Charges vs. Taxes and Subsidies". Centre de Recherche en Economie et Droit de L'ENergie – CREDEN. Universite de Montpellier I.

<sup>36</sup> See Madet, Charles et al. 2004. "Funding Universal Service Obligations with an Essential Facility: Charges vs. Taxes and Subsidies". Centre de Recherche en Economie et Droit de L'ENergie – CREDEN. Universite de Montpellier I.

<sup>37</sup> See Section 3.1.4 of the *InfoDev* ICT Regulatory Toolkit Module on Universal Access.

<sup>38</sup> The welfare benefits (through its redistributive impact) of the USO may be more difficult to assess than the welfare cost (the deadweight loss implied by the USO) and the benefits and costs used in the profitability approach.

URCA agrees with CBL that geographic size and population density play a role in the scope and cost of universal service. URCA's finds the presence of some similarities between The Bahamas and the EU, New Zealand, Canada, Australia, Asia, the Middle East, Africa, and the USA, in respect of the existence of high-density population centres and low-density (rural) populated areas. In The Bahamas the high-density population centres are in the four major islands where 90% of the population reside. Other islands have a low population density.

As ECS 12/2012 was specific to the implementation of the existing universal service obligations, the issue of tariff rebalancing, though relevant, received no consideration in the consultation. URCA is of the view that rebalancing should be treated separately and apart from USO, given the range of issues that need to be addressed. URCA acknowledges comments made in the Statement of Results on Retail Pricing in respect of tariff rebalancing, and has been working with BTC since 2009 to have in place relevant and reliable costing information to inform retail pricing decisions going forward.

URCA is in agreement with the various criteria CBL identified that should be included in any established USO programme and funding mechanism, and stresses that these are already incorporated in URCA's approach:

- URCA intends to, going forward, undertake timely reviews of the existing universal service obligations.
- Market based options would be considered on a case by case basis at the appropriate time. URCA will consult on such options prior to implementation.
- Rules will be put in place to ensure that the USF is managed and operated in an efficient, transparent, non-discriminatory and competitively neutral manner.
- The profitability cost approach to the assessment of the universal service cost seeks to minimize the regulatory burden on service providers.

### **3.8 Other comments**

CBL raises the concern that URCA, in ECS 12/2012 is seeking to expand the scope of the multichannel Basic Television Service offering under the USO. CBL cites Section 3.4.2 of the consultation where URCA refers to the offering as a 'minimum' of six channels, thereby implying that the Basic Television Service under the USO could require the provision of more than six channels.

URCA notes that by definition the Basic Television Service USO is a multichannel television services comprising six channels, including ZNS Channel 13 and the Parliamentary Channel.

URCA however recognizes that the nature of the cable television industry may not necessarily lend itself to only a six channel offering. For that reason therefore, URCA, is of the view that CBL should have some flexibility in regards to the number of channels included in the USO Basic Television Service. However, this service must comprise no less than six channels.

## 4. Responses to individual Consultation Questions

In this Section URCA sets out the responses received to each of the consultation question, URCA's comments on responses received, and URCA's final decision with respect to each proposal.

### 4.1 Inclusion of Access in Definition of Basic Telephony Services

**Question No. 1:**

*Do respondents agree with URCA's proposal to include "access" in the definition of Basic Telephony Services for universal service purposes?*

#### **BTC's Comments**

BTC stated that it has no objection to the inclusion of 'access' in the definition of basic telephony services, given that 'access' is implied in the definition.

#### **CBL's Comments**

CBL commented that URCA's proposal to include access in the definition of basic telephony services is another example of the existing ambiguities and conflicts in the Comms Acts. CBL further commented that due to errors or omission in s. 119(1) and Schedule 5 of the Comms Act, URCA proposed three interpretations to clarify the obligation and definition of basic telephony.

CBL stated that policy makers and regulators typically defined basic access to include voice grade fixed access to the PSTN and that this definition pre-dated the explosion of mobile service. CBL thereafter stated that it was therefore logical for URCA to review the convergence of mobile and fixed service in the context of technologically neutral regulation. CBL proposed that URCA make recommendations to the Minister for the adoption of a revised USO policy capable of practical implementation pursuant to s. 41 of the Comms Act or failing which, seek legislative changes to give effect to its proposed interpretations.

#### **URCA's response to comments**

As noted in BTC's response, "access" is implied in the definition of "basic telephony services" as defined in Schedule 5 of the Comms Act. As such, URCA strongly disagrees with CBL's comment that URCA's proposal is due to errors or omission in the Comms Act. In the consultation (ECS 12/2012), URCA merely sought to make clear to all stakeholders that basic telephony services

included access. Further, the purpose of URCA’s proposal in the consultation document to adopt the EU’s definition for fixed telephony services is to make it clear to all stakeholders that fixed telephony services include access at a fixed location and not to fixed line network telephony service. Access refers to a connection to a network at a fixed location able to support voice telephony. In URCA’s view, these clarifications do not amount to errors or omissions in the Comms Act requiring legislative changes to the Act.

URCA notes the comment on fixed to mobile convergence and reminds CBL that the current obligation as mandated in the Comms Act relates to fixed voice telephony services provided at a fixed location. For this reason, and for the purposes of implementing the existing obligation, URCA is not required to consider fixed to mobile convergence and is satisfied that its approach is supported by relevant legislation and policy.

### **URCA’s final decision**

The universal service obligation in relation to the provision of Basic Telephony services includes the provision of “access” at a fixed location. BTC is the designated USP under the Comms Act to provide Basic Telephony services.

## **4.2 Definition of Basic Telephony**

### **Question No. 2:**

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

### **BTC Comments to Question 2**

BTC did not object to URCA’s description of fixed voice telephony as per the consultation. BTC expressed the view that basic telephony should be subject to the principle of technology neutrality thereby allowing the USP flexibility in choosing the appropriate technology that allows efficient use of resources.

### **CBL Comments to Question 2**

CBL also expressed support for a technology neutral approach to the provision of basic telephony services. CBL commented that to the extent there may be a requirement to expand basic telephony services coverage to a currently unserved/underserved area for US purposes; it should be done using least cost technology.

CBL emphasised that the Comms Act was designed to be technology neutral, hence the absence of a definition for ‘fixed voice telephony’ in the legislation. In CBL’s view, URCA should consider whether such a definition is needed because it would move the regulatory regime further away from the principle of technology neutrality.

### **URCA’s response to comments**

It is URCA understanding that the USP has freedom to deliver the required access and calling services using both wireline and/or wireless technologies. In this respect the principle of technological neutrality has been adhered to.

URCA disagrees with CBL that the description of Fixed Voice Telephony as per the consultation may not be necessary. URCA is of the view that the clarification set out in the consultation promotes awareness within the industry that the USP has freedom to deploy wireline and/or wireless technologies and other least-cost option to fulfil the designated USOs.

### **URCA’s final decision**

The technology neutral definition of Fixed Voice Telephony shall be:

*“a system of telecommunications in which telephonic equipment is employed in the transmission of speech or other sound between points, with or without the use of wires.”*

Basic telephony services under the USO refer to the installation, maintenance and servicing of a subscriber line to support voice telephony at a fixed location and voice telephony services over this line<sup>39</sup>. BTC has to make these services available upon request in all populated areas at (geographically) uniform and affordable prices. These services are remunerated with rental, installation fees and call rates.

## **4.3 Exclusion of Call Management Services in Basic Telephony Services**

### **Question No. 3:**

*Do respondents agree with URCA’s proposal that call management services and calling features should be excluded from the Universal Service Obligation?*

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<sup>39</sup> The voice services include making and receiving both domestic and international calls.

### **BTC's Comments**

BTC agrees with the exclusion of call management services from the Basic Telephony Services USO.

### **CBL Comments**

CBL agrees with URCA's proposal.

### **URCA's response to comments to Question 3**

URCA notes the agreement of both BTC and CBL with URCA's proposed approach that call management services and features should be excluded from the Universal Service Obligation.

### **URCA's final decision**

Call management services and calling features are outside the scope of the USO for Basic Telephony Services.

## **4.4 Criteria for Assessing Basic Telephony Services Affordability**

### **Question No. 4:**

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

### **BTC's Comments**

BTC commented that 'Basic Telephony Services' as described in ECS 12/2012 are price regulated by URCA, that retail charges for these services are subjected to regulatory approval and are to be cost based using BTC's A/S results. BTC noted that the Retail Pricing Rules specify a set of objectives for the imposition of charges for price regulated services and explained that where geographic averaging of pricing exists, under the existing arrangement, subscribers, irrespective of whether they are in a profitable or unprofitable location, pay the same price regulated charges.

#### **CBL Comments to Question 4**

CBL reasoned that URCA’s proposed list of criteria to assess affordability is more applicable to basic telephony and not to internet and cable television services<sup>40</sup>. In CBL’s view any assessment of affordability of a service’s price must be cognizant of the cost of provisioning the service and any requirement to price a service below cost should be kept at an absolute minimum and narrowly targeted as possible to minimize inefficiencies and market distortions.

CBL considers that designated USPs and other interested parties should have the right to comment on and provide any evidence they consider relevant to the assessment of the affordability of the price of any designated USO service. CBL commented that in this respect, an open and transparent process is necessary given that any finding by URCA that the affordable price level is less than the cost would potentially generate a significant USO funding requirement and result in inefficiencies and market distortions. CBL contended that URCA’s proposal makes such a consideration difficult for a number of reasons:

- URCA offered insufficient guidance on how information on the listed criteria is to be presented and used.
- URCA did not present where some of the secondary information might be sourced and/or ascertain whether the local data necessary for the listed criteria is actually available in The Bahamas.
- URCA does not distinguish between affordability analysis for existing and new services and whether this analysis is required for one or both types of services.

Specific to URCA’s proposed affordability criteria, CBL agreed that subscription levels, household income and cost of living are relevant but should be considered over time rather than at a single point in time. CBL commented that when considering these criteria, URCA should have regard to inter alia, changes in the economy, consumer preferences and substitution effect<sup>41</sup>.

CBL was of the view that this criterion “size of calling area” was more applicable to basic telephony than to cable television.

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<sup>40</sup> CBL referenced the 1997 Federal Communications Commission’s (FCC) Universal Service Report and Order which was referenced by URCA in ECS 12/2012 in support of its proposals.

<sup>41</sup> i.e. mobile services as substitute for fixed service, broadband (fixed and mobile) for dial-up, satellite television, online video service (Netflix) and IPTV services for cable television



While CBL agreed with the criteria, “household income in different group”, CBL reasoned that where the criteria were narrowly applied it can lead to distortion. That is, if the criteria were applied to a low-income group which represents a very small percentage of the population, then very few products or services would be found to be affordable. CBL explained that establishing an affordable price threshold on such a narrowly defined basis would be misguided since it has the effect of potentially capping the price of the service below the cost of the service, despite the fact that a considerably higher or even cost-based price would be affordable to the vast majority of the population. CBL was therefore of the view that setting prices on such a narrowly defined criterion could lead to significant inefficiencies, undermine investment incentives, and distort market forces.

CBL also suggested that URCA give consideration to service penetration rates for assessment of affordability. In this regard, changes in penetration rates and the reasons for those changes should be evaluated over time. CBL further suggested that the comparison of the penetration rates with similar countries should be done when assessing the reasonableness of the penetration rate. CBL also suggested that household income, GDP per capita and general price levels from year to year be considered in the assessment of affordability.

#### **URCA’s response to comments to Question 4**

URCA reiterates that the provision of the universal services includes the requirement that certain universal services are made available to users at a charge that is affordable to all. Further, URCA reminds USPs that the affordability requirement is explicitly enshrined in the Comms Act.

URCA disagrees with the view that since some universal services are also subject to the Retail Price Rules, their prices are by implication affordable. Subjecting Basic Telephony Services to the Retail Price Rules is not a sufficient condition to ensure these services are affordable to all, including disadvantaged groups of population. Although the Retail Price Rules require that tariffs be based on the fully allocated cost incurred in the provisioning of the service, the resulting level of uniform price may not be at a level which is affordable. Therefore, it is not the case that in accepting a price increase under the Rules, URCA is also accepting that the services satisfy the affordability test for USO purposes.

URCA agrees with CBL that the final decision on affordability resides with URCA. URCA is committed to a transparent process for assessing affordability for the specified services. Under this approach, USPs will be afforded the opportunity to make representations to URCA on the affordability of specified universal service. To this end and in keeping with CBL's comment URCA proposes to issue guidelines (including affordability criteria) for assessing affordable pricing for specified universal services.

## **URCA's final decision**

URCA will issue appropriate Guidelines to the USPs for their assessment of affordability.

### **4.5 Minimum Bandwidth for Internet Services**

#### **Question No. 5:**

*Do respondents agree with URCA's proposal not to specify a bandwidth throughput for CBL's Internet Services USO?*

#### **BTC's Comments to Question 5**

BTC was of the view that USO Internet Services should be subject to a specified high speed requirement and felt this would provide the needed clarity to s. 119(1)(b) and Schedule 5 of the Comms Act.

#### **CBL's Comments to Question 5**

CBL contended that URCA's proposal presupposes there is a legally enforceable USO for Internet applicable to CBL. CBL commented that URCA interprets the internet USO applicable to CBL very narrowly in line with the interim nature of the provisions of s. 119 and Schedule 5 and replicated in the ECSP. CBL contended that since it had no US obligation prior to the enactment of the Comms Act in 2009, no USO obligation should be imposed post Comms Act until the Minister reviews the current ECSP and possible action under s. 41 of the Comms Act. Alternatively, URCA should exercise its powers under s. 45(2)(b) of the Comms Act and relieve CBL of the Internet USO beyond the normal service provision commercially on offer.

#### **URCA's response to comments to Question 5**

URCA reiterates that the Comms Act imposes an Internet Services Obligation on both BTC and CBL, and both provisions are to be made in all populated area at a uniform and affordable tariff.

URCA directs attention to URCA's response at Section 2.1 above ("Ability to Implement the transitional USO provisions") on the legality of the internet USO. URCA reminds CBL that the provisions contained in the Comms Act are applicable from the commencement of the Act until such time as a determination of USOs and designation of USPs are made in accordance with Part VII of the Comms Act.

### **URCA's final decision**

CBL is designated under the Comms Act to provide a USO internet service to all populated areas. CBL must provide that service at a nationally uniform and affordable tariff. CBL is now required to define the features of its USO internet service including its minimum bandwidth throughput.

## **4.6 Retention of Dial-up Internet Services**

### **Question No. 6:**

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

### **BTC's Comments**

BTC agrees with URCA's retention of Dial-up Services as defined in Schedule 5, paragraph (2) of the Comms Act.

### **CBL's Comments**

CBL questioned the practicality of designating BTC's basic dial-up Internet as a USO service. CBL commented that as far as CBL could determine BTC no longer offers dial-up Internet service and that BTC's focus is on the provision of Broadband Internet services using both DSL and Wi-Max. CBL cited statements attributed to a senior BTC executive that indicates that BTC's 4G mobile network would serve as a primary means for Bahamians to access the Internet.

### **URCA's response to comments**

URCA reminds CBL that BTC is designated under the Comms Act to provide a USO dial-up internet service to all populated areas. URCA recognizes however that BTC's national network is undergoing transformation and the likelihood of company's ability to continue providing a 56kbps product is not assured on a going forward basis. To this end, URCA is of the view that where BTC, as a result of this national network transformation, is unable to provide dial-up internet services in a populated area, BTC would still be required to fulfil its existing US internet service obligation. In such cases, it is for BTC to notify URCA and obtain URCA's prior approval in advance, in regards to the specifications and other features of BTC's USO internet service including its minimum bandwidth throughput and to satisfy URCA that all other relevant USO requirements, namely uniform pricing and affordability are adhered to.

## **URCA's final decision**

BTC is designated under the Comms Act to provide a USO dial-up internet service to all populated areas. BTC must provide that service at a nationally uniform and affordable tariff. Should BTC wish to cease to provide dial-up internet services as a result of the transformation of its network, BTC will continue to be required to meet this obligation and must propose an appropriate substitute service with which it would meet the obligation, and obtain URCA's prior approval to any change in the services it provides in fulfilment of its USO internet obligation. In respect of any substituted service BTC must satisfy URCA that it is an appropriate service in all material respects including speed, capability and all other relevant USO requirements, namely uniform pricing and affordability.

### **4.7 Proposed Minimum Distance to Pay Apparatus**

#### **Question No. 7:**

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

#### **BTC Comments**

BTC contends that a minimum distance to pay apparatus within one (1) mile or twenty minutes walking distance of a populated area is an inefficient proposition. Instead, BTC opined that having a minimum number of payphones in public areas would suffice. BTC would want to be able to determine such minimum number.

BTC argues that with the high mobile penetration rate achieved to date the demand for public payphones is now reduced. As a result URCA's proposal may lead to an inefficient use of resources, in particular if, the obligation leads to the provision of payphones for which there is no demand. BTC provided no evidence to substantiate its response.

#### **CBL Comments**

CBL invites URCA to provide the evidence for its preliminary proposal under Question 7. CBL emphasised that URCA's proposal should be supported by relevant market/demand studies demonstrating that there are no competitive alternatives available for the service currently or within a reasonable time period and the cost of the proposed measure so that it can be properly evaluated pursuant to s. 5 of the Comms Act.

CBL proposes that BTC should not withdraw existing payphones until there is evidence that there is no demand for these and a practical substitute is available to users. Equally, CBL sees no rationale for increasing the number of payphones.

### **URCA's response to comments to Question 7**

URCA reminds BTC and CBL that under the existing USO, BTC has an obligation to provide public access to pay apparatus and URCA's is merely endeavouring to ensure compliance with the obligation. In this context, there is no legal requirement for URCA to conduct an economic and technical feasibility study in respect of the obligation at this time. However, URCA recognizes that any future review of the current USO should have regard to relevant market data and assessment of competitive offerings as advocated by CBL.

URCA agrees in principle with BTC on the placement of a minimum number of payphones in public areas. However, URCA is concerned with the situation when public areas, such as shopping malls, public buildings and specific institutions are closed for business and end-users have no access to payphones located within public areas outside their opening hours. URCA seeks to ensure that the public has unrestricted access to payphones with adequate geographical coverage.

While the international experience suggests public payphones are placed either within a certain distance of everyone, or traveling/walking distance or for every settlement or community over a given size,<sup>42</sup> URCA accepts the arguments that there is a need for further consultation with the industry on an appropriate distance/time or proxy related measure for the placement of a public pay apparatus. To that end, URCA would continue to engage BTC, as part of the development of BTC's implementation plan, to establish the criteria that will ensure an adequate availability of payphones across the country.

As part of any future review of the scope of USO, URCA proposes to conduct relevant studies on the nexus between the demand for public pay apparatus and mobile penetration to inform the development of universal policy in The Bahamas.

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<sup>42</sup> Russia, for example, defines universal access as the establishment of a minimum of one working payphone within one hour's walking distance of every inhabited community, while Peru defines universal access in terms of the rural population's need to travel only 5.6 km to reach a public payphone. In South Africa it refers to a payphone within 30 minutes travelling distance; 20 km in Burkina Faso. In Uganda and Ghana, it is defined as a working payphone per 500 people, while in Brazil it's 400 people.

### **URCA's final decision**

BTC is designated under the Comms Act, with the universal service obligation to provide Public Pay Apparatus.

URCA will engage BTC during the development of BTC's USO implementation plan to design a set of USO rules for the determination of the number and the placement of Public Pay Apparatus which shall ensure unrestricted access to these pay apparatus by members of the public.

## **4.8 Mandated Minimum Number of Pay Apparatus in Public Places**

### **Question No. 8:**

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

### **BTC's Comments**

BTC objects to URCA specifying the minimum number of public pay apparatus. BTC is of the view that it should be entitled to determine the size of its payphone network. BTC explained that the ubiquity of cellular mobile has reduced the demand for public payphones in any case.

### **CBL Comments**

CBL argues that a requirement that BTC continue to make available a minimum number available in all public places (including the possibility of increasing the number of payphones) should be carefully evaluated, including the costs of such provision. CBL commented that it is not suggesting that some existing payphones be withdrawn from service, at least not until such time as there is demonstrated minimal demand for the service and a practical substitute is available.

### **URCA's response to comments**

As the comments on Question 8 overlap with the comments on Question 7, URCA will not repeat its responses here and refers to its responses under Section 4.7 above.

### **URCA's final decision**

See URCA's final decision under Section 4.7 above.

## 4.9 Additional Channels to Basic Television Services

### **Question No. 9:**

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

### **BTC's Comments**

BTC believes subscribers should determine the additional channels to comprise the Basic Television USO offering.

### **CBL Comments**

CBL commented that the provision of Bahamian content is the responsibility of the BCB. To require that the additional channels comprising the Basic Television Service package have specific characteristics restricts CBL's commercial freedoms.

### **URCA's response to comments**

URCA agrees in principle with BTC that the subscribers to a television service would be best served in a competitive market if they can choose the channels of interest. Indeed, it is URCA's view that the USP should be free to select the four additional channels to ZNS and the Parliamentary Channel to best meet customer needs. However, such selection must take into account the proposed guidelines discussed in ECS 12/2012. That is, the four additional channels should be informative on matters relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment. For the avoidance of doubt, a Basic Television Services package containing additional channels that are sufficiently informative on matters relevant to the Bahamian society is not necessarily intended to consist of the provisioning of exclusively Bahamian content or require that the additional channels have the same characteristics as the Broadcasting Corporation of The Bahamas.

### **URCA's final decision**

Under the Comms Act, CBL is obligated to provide a new multichannel Basic Television Service comprising six channels. Two of these channels are ZNS and the Parliamentary Channel. CBL is to select the additional four channels under the condition that these four additional channels must be sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment.

CBL's Basic Television Service must be available to subscribers in all populated areas throughout The Bahamas at a uniform and affordable tariff. Therefore, CBL is required to make available its USO Basic Television package in all populated areas of The Bahamas, including those areas where it currently only offer its more wide-ranging SuperBasic service.

#### **4.10 Basic Television Services – Access Cost**

**Question No. 10:**

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

This question relates to the pricing of what is a new USO product – a Basic Television Service - and ultimately to the potential revenues to be made from the sale of this new product, which in turn will be taken into account in the calculation of the net cost of the USO Television Service provision.

#### **BTC's Comments**

BTC submitted that in calculating the cost of providing Basic Television Services, it is the avoidable costs associated with the provision of the USO and if there is part of the access cost that is not avoidable then that cost should not be included as part of the calculation of the USO, given that these fixed costs are also used in the provision of other communications services.

In response to Question 9, BTC noted URCA's statement that "URCA is of the preliminary view that total access costs should not be borne solely by the Basic Television Services USO", and stated thereafter that taking into account the discussion on 'pay or play' mechanisms in the Consultation, there is an option for CBL to pay another provider to deliver Basic Television Service in fulfilment of the USO.

#### **CBL's Comments**

CBL commented that it would be inappropriate to allocate an arbitrary and disproportionate share of access costs to other (non-USO) services, as a means to justify an artificially deflated price of the USO TV service. CBL stated that such an approach would be equivalent to a non-USO service priced at a relatively high level on the basis of inappropriate allocation of access cost, cross-subsidising USO services. This, in CBL's view, is a regressive policy measure and is contrary to the guidelines on regulation and Government measures set forth in s. 5 of the Comms Act.



Secondly, CBL stated that the new USO Basic Television Service priced at a level below its “true” costs would become relatively more attractive than CBL’s commercial pay television services and subscribers would switch away from CBL’s commercial television packages to the under-priced USO Basic Television package. CBL contended that this would place an even greater burden on CBL’s commercial pay television services to subsidize the new USO Basic Television Services.

While CBL did not support URCA’s proposal of imposing a USO on its cable television service, CBL stressed the importance of URCA adopting regulatory measures that are competitively neutral and this includes cost allocation rules that should also pertain for USO Basic Telephony Services.

### **URCA’s response to comments**

URCA accepts that the new USO Basic Television Service may be offered at a price below the current SuperBasic package and existing SuperBasic subscribers may choose to switch to the relatively cheaper USO package. Some degree of substitutability may take place and this will depend on the relative prices of both USO and SuperBasic packages. However, it seems premature to URCA to claim that the magnitude of such a switch may be of importance as the new USO Basic Television package has not been priced and none of the additional channels identified. Further, the USO Basic Television Service may lead to new customers subscribing to CBL’s service, especially households that may find the price of the SuperBasic television package is unaffordable.<sup>43</sup>

URCA understands CBL’s concern that the share of costs allocated to non-USO services may be disproportionate to advantage USO services<sup>44</sup>. Cost allocation of a common asset is indeed an issue in a multi-product firm with fixed and common costs. Such cost allocations should therefore be governed by the principles set out in URCA’s cost accounting and accounting separation guidelines.

### **URCA’s final decision**

The pricing of the new USO Basic Television package should take into account all costs attributed to this service, including a share of common and fixed access costs. These costs are to be borne by all services making use of the access facilities.

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<sup>43</sup> See URCA’s Public Consultation on CBL’s recent Price Increase Application for SuperBasic [ECS 23/2012].

<sup>44</sup> To the extent that non-USO services are provided in competitive markets, a regulatory concern is that the firm also entrusted with a USO allocates disproportionate common costs to USO services to make its non-USO services more competitive. URCA notes that this is the inverse concern to that expressed by CBL.

## 4.11 Definition of Designated Specified Institutions

### **Question No. 11:**

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

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

This question relates to the provision of telephony, internet and cable television services to specific institutions free of charge.

### **BTC's Comments**

BTC raised no objections to the proposed definitions of specified institutions.

### **CBL's Comments**

CBL similarly expressed support for URCA's proposals and stated that CBL presently has a voluntary programme in place that facilitates the provision of Internet services to charitable institutions, public schools and libraries.

CBL, however, contended that the USO as currently defined remains an open-ended obligation. There is a need for further parameters to articulate an operational definition of the obligations. CBL further contends that the Comms Act does not specify targets for the quality of the USO services to be provided, nor does it set the principles of use by these institutions. For example, there are no restrictions on the ability of specified institutions to charge for or resell the USO service they are receiving from the USP free of charge and suggested that reselling should be forbidden.

CBL also suggested that the provision of services to specified institutions should be limited to one standard installation at a single point on the premises and shall not require wiring of the premises. CBL further suggested that CBL should be permitted to charge for any repairs other than those necessary to effect delivery of signal to that single point on the premises.

CBL also expressed concerns that URCA has changed the language of the Comms Act whereby institutions are no longer required to be “registered with URCA” but instead be “registered with Ministry of [ ]”. CBL suggested that URCA’s proposal, if accepted, would be *ultra vires* the Comms Act.

### **URCA’s response to comments**

URCA notes CBL’s comments on the lack of specificity in the Comms Act relating to quality of service to be provided, amongst other factors. URCA recognizes the importance that quality of service plays in the definition of the universal service obligations related to telephony, internet, and cable television and ultimately in the net cost of a USO provision at a given quality level.

As an outcome of this consultation URCA proposes to undertake a separate work stream on consumer protection issues in relation to all electronic communication services<sup>45</sup>. This proposal is in keeping with URCA's mandate under the Comms Act to monitor and enforce relevant license conditions on consumer protection and issue general regulations to protect consumers<sup>46</sup> URCA’s work will be undertaken in consultation with stakeholders.

URCA agrees with CBL that Specified Institutions should not benefit commercially from free USO internet services in either charging or reselling USO internet services. However URCA has limited resources available to enforce such a condition on Specified Institutions. URCA remains of the view that the specified institutions should not charge for or resell the provided service in practice:

- (i) public institutions such as public schools, public hospitals and public medical clinics as well as orphanages (children’s home) are unlikely and/or unable to levy a direct fee for the provided internet services
- (ii) with the exception of community centers, all “specified institutions” are entitled to levy a direct fee for the access to and use of the services made available within their premises. These include admission fees, tuition fees, activity fees, membership fees, fees for services, etc. To the extent these fees aim to recover the cost of operation (e.g.,

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<sup>45</sup> Members of the public have also expressed concerns about the quality of cellular mobile services offered by BTC.

<sup>46</sup> See Sections 45(2) and 46 of the Comms Act.

cost of computers and computer peripherals, furniture and fixtures, television sets, utilities, equipment maintenance, internal network topology, etc.) and the cost of access to USO services is nil, then these fees do not seek to recover a cost not incurred by these institutions.

CBL has to provide upon request to Specified Institutions one standard installation for Basic Television Service inclusive of the “set-top box” and maintain the connection and device. An internet USP (i.e., BTC and CBL) has to provide upon request to these same institutions one access connection inclusive of the internet modem, and maintain the connection and device.

URCA does not agree with CBL that URCA’s proposal clarifying the definition of Specified Institutions (except for Community Centers) as those institutions registered with a designated governmental authority is *ultra vires* the Comms Act. URCA considers that the organizations identified in Section 3.5 of the Consultation are better suited to identify the various institutions under their respective purview. In order to avoid the “administrative nightmare” adverted to by CBL in its response and to ensure the *bona fides* of any Specified Institution, URCA will use the various registers of these agencies and regulatory bodies to identify the Specified Institutions that are authorized to acquire and use the designated universal services. For the avoidance of doubt, the requirement of registration with URCA has not been removed. Prior registration with the relevant body is a pre-requisite to obtaining URCA registration.

### **URCA’s final decision**

There are six designated Specified Institutions that are defined as follows for the purpose of having access to a set of USO services free of charge:

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

CBL has to provide upon request to any of the foregoing Institutions one standard installation for Basic Television Service and the set-top box. An internet USP (i.e., BTC and CBL) has to

provide upon request to these same institutions one access connection inclusive of the internet modem.

The internet services **only** are to be provided free of charge to the identified specified institutions.

#### **4.12 Specified Institutions Registration and Publication**

**Question No. 12:**

*Do respondents agree with URCA's proposal that URCA establish a Specified Institutions Register and publish that Register quarterly on its Website?*

#### **BTC's Comments**

BTC has no objection to URCA's proposal. BTC however, expressed its concerns that the Comms Act is unclear as to which entity has responsibility for providing Internet Services in areas where there is the presence of both CBL and BTC. In BTC's view both companies should not be required to provide 'free' service to the same institution.

#### **CBL Comments**

CBL agreed with URCA's proposal.

#### **URCA's response to comments**

URCA believes the Comms Act is clear in its requirement for designated USPs to provide internet service to all populated areas in The Bahamas. Schedule 5 of the Comms Act explicitly states that both designated USPs of internet service are required to provide internet service free of charge to specified institutions. At this stage, URCA is hard pressed to remove the obligation from any one designated USP until URCA has conducted a review of the USOs in accordance with sections 41 and 42 of the Comms Act.

#### **URCA's final decision**

Both CBL and BTC are required under the Comms Act to provide USO internet services free of charge to Specified Institutions upon request. A Specified Institution is free to request USO Internet Services from both CBL and BTC free of charge.

Specified Institutions as defined in Section 4.11 above must register with URCA to be eligible to receive USO services. URCA will publish on its website an updated register of Specified Institutions on a quarterly basis.

### 4.13 Definition - Community Centers

**Question No. 13:**

*Do respondents agree with URCA's proposed working definition of Community Centers?*

Community Centers are also categorised as Specified Institution and can request the same USO services on the same terms and conditions as other Specified Institutions (see Sections 4.11. and 4.12 above). They are considered separately in URCA's consultation because they have not been defined in the Comms Act and there is no government ministry or agency responsible for designating, licensing or registering Community Centers.

#### **BTC's Comments**

BTC had no objection to URCA classifying Community Centers as not for profit organizations. BTC suggested that the wording be crafted in such a manner that these organizations do not profit from the free internet services provided by USPs as part of the USOs.

#### **CBL's Comments**

CBL amended URCA's proposed wording on what constitutes a Community Center from "not-for-profit" to "non-profit" and included "free of charge or for a nominal fee" in the definition – viz "*... which facility is accessible to all residents of a locality or community in which the facility is established and is utilized by the residents of that locality or community **free of charge or for a nominal fee**, for the provision of community activities ....*"

#### **URCA's response to comments**

Having reviewed the Companies Act, 1992, and the definitions of the terms 'not-for-profit' and 'non-profit', URCA is of the view that these terms are generally used interchangeably.<sup>47</sup> URCA is however guided by the Companies Act, 1992, which uses the term 'non-profit' and therefore agrees with CBL that the terms non-profit be used instead of not-for-profit.

For the avoidance of doubt, URCA considers that "Community Centers" includes organizations that either provide specialized services to the differently abled or represent these customer groups. Some examples are Bahamas Alliance for the Blind and Visually Impaired, Bahamas Association of the Physically Disabled, and Training Centre for the Disabled. This is consistent

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<sup>47</sup> URCA's research suggests that not-for-profit is typically used in the United Kingdom while non-profit is preferred in the United States of America.

with paragraph 54 of the ECSP, which requires the provision of specified USOs to all persons in The Bahamas who today benefit from electronic communications services.

Separately to this question and in relation to the use of USO services made available to Community Centres, URCA agrees with BTC and CBL that Community Centers should not profit from the free internet universal service obligation.

Similarly URCA recognizes, as is the case in Section 4.11 above regarding other Specified Institutions, that it may be appropriate for Community Centers to charge a nominal fee for the maintenance, operation and use of the Center. URCA therefore agrees that the definition of Community Center include the “free of charge or for a nominal fee” phrase proposed by CBL. URCA also notes that CBL’s comments under this part are at variance with its comments under Question 11 (i.e. the “specified institutions” charging a nominal fee as against not being required to charge a fee).

#### **URCA’s final decision**

A Community Center shall mean:

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

For the avoidance of doubt, “Community Centers” include organizations that represent or provide specialized services to the differently abled and shall include but is not limited to Bahamas Alliance for the Blind and Visually Impaired, Bahamas Association of the Physically Disabled, and Training Centre for the Disabled.

#### 4.14 Minimum Information Required for Qualification as a Community Center

**Question No. 14:**

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

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

**BTC’s Comments**

BTC suggested that, in addition to the listed information, URCA should mandate operators of Community Centers to provide a signed declaration stating that the Centers will not charge users of the universal services available in the Centers in accordance with paragraph 2(e)(vi) of Schedule 5 of the Comms Act.

**CBL Comments to Question 14**

CBL maintained that the proposed criteria should be expanded to include the “free of charge or for a nominal fee” and “non-profit” characteristics.

**URCA’s response to comments**

URCA notes a general agreement with its list of criteria listed as set out in Question 14, and that this is in conformance with s. 161 of the Companies Act.

**URCA’s final decision**

To qualify as Community Center under paragraph 2(e)(vi) of Schedule 5 of the Communications Act and be granted access to the USO services on the terms allowed to such Centers, organisations will be required to provide a set of information to URCA. This set of information



will include: a signed declaration by the Community Center, stating that the Center is a non-profit organization and that there will be no charges imposed for the use of the acquired universal services. URCA will publish on its website a template application for Community Centers, which among other items will include confirmation of address (e.g., a utility bill).

#### **4.15 Community Centers - Annual Requirement**

**Question No. 15:**

*Do respondents agree with URCA's proposal that Community Centers demonstrate each year they meet the stipulated requirements to both URCA and the USP from which they are seeking universal services?*

#### **BTC's Comments**

BTC had no objections to this proposal.

#### **CBL's Comments**

CBL disagreed with the proposal under Question 15 above. CBL agreed that the Community Centers would have to reapply for such status annually.

CBL is concerned with the cost of this verification process on USPs, noting that the opportunity cost in terms of staff expenses and time would be significant for the Family Islands. CBL strongly objected to URCA's proposal, suggesting that URCA fulfil this role in line with the requirements of the Comms Act.

#### **URCA's response to comments**

URCA advises CBL that were URCA to engage in the physical verification of Community Centers, the cost of regulation would increase significantly for licensees, especially if URCA verify the Centers and the ability of the designated USP to provide the services in question. URCA notes that the application process is a paper-based one with the applicant providing, at a minimum, the information listed in Section 4.14 above, alongside a signed declaration to the effect that the Center is a non-profit organization and that the use of the communications services is provided for non-pecuniary gains.

For the avoidance of doubt, as stated in Section 3.5.1 of the consultation document, USPs are entitled to check through on-site visits and satisfy themselves whether the applicant truly meets the above criteria and conditions for qualification as a Community Center; if satisfied, the USP shall provide the designated universal services. In any event, the USPs would have to visit a

Center in order to determine the infrastructure needed to provide the said services. URCA therefore maintains that the USP is entitled, but not obligated, to conduct the verification of the Community Centers to ascertain whether such Centers qualify for the designated universal services prior to providing the designated services.

URCA reaffirms that should the USP conclude that the Community Center does not meet the requirements for the designated services, both the USP and the Center are required to put forward their respective cases to URCA for URCA's consideration.

#### **URCA's final decision**

- Community Centers must demonstrate each year to both URCA and the USP from which they are seeking universal services that they meet the stipulated requirements.
- The USP may conduct verification of the Community Centers to ascertain whether such Centers qualify for the designated universal services prior to providing the designated services.
- Should the USP conclude that a Community Center does not meet the requirements for the designated services, both the USP and the Center are required to put forward their respective cases to URCA for URCA's final determination.

#### **4.16 Accessibility of USO services to Differently-abled users**

**Question No. 16:**

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

This question relates to the principle that differently abled users should be entitled to have equal access to USO services, and measures taken to facilitate access as necessary.

#### **BTC's Comments to Question 16**

BTC is in agreement with the principle that telecommunications services should be accessible to the differently-abled.

#### **CBL's Comments to Question 16**

CBL stated that the proposal is "not applicable to CBL", whose USOs concern internet and cable television.

### **URCA's response to comments**

URCA has noted the responses of both BTC and CBL. The USO services concerned are USO telephony services.

### **URCA's final decision**

Universal Telephony Services shall be accessible to any differently-abled user anywhere in The Bahamas.

## **4.17 Subsidized Specialized Equipment for the Differently-abled**

### **Question No. 17:**

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

To make USO telephony services accessible to differently-able users, specific equipment is necessary for these users. URCA proposes that differently-able users acquire such specific equipment at subsidised rates.

### **BTC Comments**

In principle, BTC supports access to telecommunications services by the differently-abled, but stated that it was premature to conclude on the level of subsidisation for specialised equipment as outlined in Section 3.6 of ECS 12/2012. To come to such a view, BTC invites URCA to obtain:

- A clear understanding of the cost involved in providing such features.
- An engagement process with the organizations in the community that represent the differently-abled.
- A discussion on funding alternatives for the provision of telecommunications services to the differently-abled. (BTC commented that in some jurisdictions funding is provided by way of direct government subsidies.)

### **CBL's Comments**

CBL stated that the proposal is "not applicable to CBL".

### **URCA’s response to comments**

URCA agrees with BTC’s comments. As previously stated at Section 3 of this Statement of Result, URCA is not seeking to alter, amend, expand or modify the existing USOs and the designation of USPs specified under s.119(1) and Schedule 5 of the Comms Act.

URCA therefore recognizes that specialized equipment or devices fall outside the present USO and therefore cannot be funded from the USF. URCA will however strive to engage BTC, as part of BTC’s implementation, to ascertain the type of devices and service that it can reasonably offer to ensure that the differently-abled have access to communications services.

### **URCA’s final decision**

Specialized equipment for the differently abled are outside the scope of the existing USO for Basic Telephony Services.

## **4.18 Register of Differently-abled**

### **Question No. 18:**

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

### **BTC’s Comments**

BTC had no objection to URCA’s proposal under Question 18.

### **CBL’s Comments**

CBL stated that the proposal is “not applicable to CBL”.

### **URCA’s response to comments**

URCA duly notes and thanks BTC and CBL for their comments.

### **URCA’s final decision**

URCA has reconsidered this question. To the extent differently-abled citizens do not receive dedicated services from telephony and cable television providers that are within the scope of USO services, such register is not warranted at this stage. URCA does not propose therefore to introduce a register of differently-abled members of the society.

## 4.19 Maximum Distance between Dwellings for Populated Areas

**Question No. 19:**

*Do respondents agree with URCA's proposal to adopt 225 yards as the maximum distance between dwellings for the purposes of populated areas?*

### **BTC's Comments**

BTC believed that the proposed distance (maximum) between dwellings ought to be derived with more objectivity (i.e., a larger sample, involving more countries that are more representative of The Bahamas), given that URCA's proposal has significant impact on USO cost, if the maximum distance is prohibitive.

### **CBL Comments**

CBL stated that URCA's proposed definition of "populated areas" is unworkable and does not appear to have been developed with the specific geographic, socio-cultural and administrative characteristics of The Bahamas in mind. CBL expressed concerns that URCA's methodology was informed by European countries and while they may be informative they are not representative of The Bahamas for a number of reasons (e.g., different topologies, government administrative conventions and socio-economic norms). CBL enquired as to whether URCA had met with Government officials, including administrators in Family Islands or similar officials, to develop a definition suitable to The Bahamas. CBL further enquired as to whether the Department of Statistics have sufficient information to know which households qualify as lying in 'populated areas'. If this type of information was not available, CBL contended it would be impossible for the USPs to know where to extend their networks and for URCA to enforce or monitor coverage requirements.

CBL commented that there is no discussion whether the 220 yards is a radius within which all 10 households must live, whether it is 10 households in a straight line with each house 220 yards apart, or some other measurement. CBL enquired as to the cost implications of adopting URCA's proposal and whether the intention was to mandate wireline telephony or cable network extension into all populated areas, particularly those unserved by one or both networks. CBL suggested that using wireless was a more efficient and effective means for providing telephony and broadband Internet services in low density areas relative to wireline technologies. In CBL's view, URCA's proposed definition would be less relevant where wireless technology is used to provide service to unserved or underserved areas of The Bahamas.

### **URCA's response to comments**

URCA recognizes that wireless technologies could be more efficient and cost effective in provisioning Basic Telephony and Internet services to unserved and underserved areas. As stated previously in this document, URCA has adopted a technology neutral policy for the delivery of the designated universal services. Nevertheless, it remains URCA's position that it would still be appropriate to specify the maximum distance between dwellings for a populated area. While URCA accepts that its proposal is based on information from the EU, URCA reminds CBL and BTC that the manner in which households across the various islands in The Bahamas are agglomerated reinforces the need to clearly define an appropriate geographic proximity, especially for the Family Islands where the socio-cultural, geographic and administrative characteristics are significantly different from what exists in New Providence.

URCA reviewed the Laws of The Bahamas but did not find a specified distance (minimum, or maximum) between dwellings for the purposes of defining a populated area.<sup>48</sup> URCA however notes that:

- the Water and Sewerage Act (WSA) requires the Water and Sewerage Corporation (WSC) to provide service to new and reconstructed dwellings of a given size (450 square feet) located with a distance of 200 yards of any service pipe or main to acquire services from the Corporation. This maximum distance of 200 yards is also specified at s. 15 of the Water Supplies (Out Islands) Act.
- the Bahamas Electricity Corporation Regulations (Regulation 3) requires the Bahamas Electricity Corporation (BEC) to supply within the area of supply to all applicants for electricity who agree to pay prescribed rates and charges and who agree to comply with the terms and conditions fixed by BEC; and
- the Eleuthera Power and Light Company Regulations (Regulations 12) requires the provision of electricity to all persons residing within the area of supply on equal rights in respect of obtaining a supply of electricity.

URCA is of the view after having considered the above legislative precedents that services should be available to all persons, irrespective of distance from the network, who are desirous of obtaining the requested service from the network utility providers. It is also URCA's view that in respect of electronic communications a figure of 200 yards (i.e., from the network service point to the dwelling) can be used as a reasonable guide for estimating the maximum distance

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<sup>48</sup> The planning and Sub-Division Act speaks to the setback from the public road.

between dwellings (i.e., provisioning service from one dwelling to another) or the distance from the available network. URCA therefore maintains its proposal of 225 yards as the maximum distance between dwellings for the purposes of populated areas.

### **URCA's final decision**

The maximum distance between dwellings for the purposes of populated areas shall be 225 yards, whether the USP is provisioning service from one dwelling to another or the distance of the dwelling from the available network.

## **4.20 Definition of "Inhabited Dwelling"**

### **Question No. 20:**

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

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

### **BTC's Comments**

BTC does not object to URCA's proposal.

### **CBL's Comments**

CBL stated that it was difficult to agree or disagree with URCA's proposal as it was unclear as to how URCA intends to apply and verify dwelling counts on the defined basis. CBL suggested that URCA use the Department of Statistics definition of dwelling as it would maintain consistency and render it more verifiable.

### **URCA's response to comments**

URCA thanks BTC and CBL for their comments.

In Section 3.7 of the consultation document, URCA stated the term 'populated area', consisting of a "group of permanent inhabited dwellings comprising ten or more households" would be construed as meaning that:

- The dwellings must be of a non-transient nature, thereby excluding chattel-houses, temporary or transportable structures;

- The structures must be dwellings or houses, thereby excluding hotels, vacation resorts, businesses and other commercial premises; and
- The dwelling must be inhabited, thereby excluding vacant, partially constructed or abandoned structures.

CBL suggested that URCA use the Department of Statistics definition of dwelling for reasons of consistency and verification. Unfortunately, CBL did not provide URCA with the Department’s definition and URCA was unable to find such a definition on the Department’s website. However, URCA was able to ascertain that the Department provides statistics for private dwellings by type of dwelling, type of tenure and cost of monthly rent or mortgage. The types of tenure and dwelling were limited to single detached, single attached, part of a private home, apartment/flat, other, or not stated amongst the categories of owned, rented and rent-free.

Based on the foregoing, URCA considers that, in order to qualify for the designated services, its proposed clarification of the meaning of a “group of permanent inhabited dwellings comprising ten or more households” is satisfied by the following description:

- Permanent dwellings means that the dwellings or premises in a populated area must be of a non-transient nature (i.e., permanent, immovable), thereby excluding chattel-houses and temporary or transportable structures (e.g., trailers, caravans, mobile homes);
- The structures must be dwellings or houses (e.g., single detached, single attached, part of a private home, apartment buildings/flats/condominiums/town houses, other permanent dwellings), thereby excluding hotels, vacation resorts, businesses and other commercial premises;
- The dwellings must be inhabited (i.e., by households consisting of one or more persons), thereby excluding vacant, partially constructed or abandoned structures;
- The dwellings (e.g., single detached premises, single attached premises, part of a private home, apartment buildings/flats/condominiums/town houses, other permanent dwellings) in any populated area must be inhabited by at least ten households (i.e., occupied by one or more persons who may be related to each other).

### **URCA’s final decision**

A populated area is made up of ten or more “inhabited dwellings”, that is to say, a group of households satisfying the following description:



- A populated area is made up of permanent dwellings; this means that the dwelling or premise must be of a non-transient nature (i.e., permanent, immovable), thereby excluding chattel-houses and temporary or transportable structures (e.g., trailers, caravans, mobile homes);
- The structure must be dwelling or house (e.g., single detached, single attached, part of a private home, apartment buildings/flats/condominiums/town houses, other permanent dwellings), thereby excluding hotels, vacation resorts, businesses and other commercial premises;
- The dwellings must be inhabited (i.e., by households consisting of one or more persons), thereby excluding vacant, partially constructed or abandoned structures;
- A populated area is made up of at least 10 households living in at least 10 dwellings (e.g., single detached premises, single attached premises, part of a private home, apartment buildings/flats/condominiums/town houses, other permanent dwellings).

#### **4.21 Unit of Assessment for Net USO Cost**

**Question No. 21:**

*Do respondents agree with URCA’s proposal that the appropriate unit of assessment of net avoidable cost be that of the individual islands?*

#### **BTC’s Comments to Question 21**

BTC supports URCA’s proposed unit of measurement at island level.

#### **CBL’s Comments to Question 21**

CBL made a number of comments.

First, CBL is already subjected to cost accounting and accounting separation requirements which are unusual for a cable operator. CBL sees this current accounting separation requirement as a significant regulatory burden which would only increase if URCA was to include an assessment of avoidable cost at an individual island level. Second, CBL stated that it is concerned with the possibility of subjective cost allocation assumptions. Third, CBL proposes that the decision on the unit of analysis be delayed until the availability of data at island level is assessed.

Notwithstanding this and should the island be the basis for analysis, CBL suggested that URCA establish a population (or other criterion) threshold to limit the number of individual islands

subject to the analysis and all islands falling below this threshold should be placed in a residual category.

CBL expressed concerns that there exists a fundamental misinterpretation by URCA of the provisions of s. 44(3) of the Comms Act in relation to the determination and funding of NAC. CBL contends that s. 44(3) is very specific in that it relates only to ‘unprofitable areas’ and not ‘unprofitable end users’ or ‘group of end users’ and that this prohibits URCA from financing many of the USOs from the USF or compensating a USP for the net USO cost of providing services at zero price to “specified institution” in profitable islands.

### **URCA’s response to comments to Question 21**

URCA notes BTC’s support for the unit of analysis in the calculation of the Net Avoidable Cost (NAC) as this relate to basic telephony and internet services. URCA agrees with BTC that the proposed approach should be flexible to consider any bottom-up cost calculations for customer groupings that BTC is able to develop. However, it remains the case that these techniques will be used to ascertain the avoidable costs should a USO service be withdrawn – as the generic NAC methodology stipulates.

In relation to the imposition of separated accounting requirements on CBL, CBL’s concerns were addressed in a previous consultation and a determination was issued on that matter.<sup>49</sup>

In relation to the unit of analysis in the context of the NAC for the provision of the USO Basic Television Service, URCA will consider further the reasonableness of an island as the unit of analysis when developing guidelines on the methodologies for calculating the net cost of the USO. URCA would similarly consider this issue for all USO services entrusted to both BTC and CBL.

In relation to USO internet services, URCA stresses that the same unit of analysis that is applicable to BTC’s USO internet service should be the same for CBL. This is to ensure competitive neutrality between both offerings. Hence, CBL’s suggestion of clustering islands would also need to be pertinent for BTC who also has to provide telephony services which are necessary for any provision of internet services. Equally, URCA notes the joint obligation of pay television and internet provision upon CBL. This will similarly have a bearing on the choice of the unit of assessment.

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<sup>49</sup> See ECS 11/2010 and ECS 12/2010.

### **URCA's final decision**

In principle, the appropriate unit of assessment of net avoidable cost of the USO related to telephony, pay television and internet shall be that of the individual islands. However, URCA will give further consideration to this issue in developing guidelines on the methodology for the NAC calculation.

### **4.22 Relevant Cost in the Calculation of Net USO Cost**

**Question No. 22:**

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

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

### **BTC's Comments**

BTC raised no objection to URCA's proposal and noted that the proposed cost elements are consistent with international best practice.

### **CBL's Comments**

CBL stated that URCA would need to establish specific and detailed guidelines for the implementation of its proposed approach, in order to ensure that such guidelines are implemented in a fair, consistent and competitively neutral manner.

### **URCA's response to comments**

URCA notes BTC's response.

URCA accepts CBL's argument that URCA establish guidelines for the implementation of NAC. URCA reminds CBL that URCA stated in Section 4.1 of the Consultation that URCA intended to establish the detail of the methodology and principles which the USP will have to follow in calculating NAC. As such, URCA will prepare and consult on appropriate guidelines to provide specific guidance to USPs on the various operational activities necessary to the provision of the USO and therefore that might be avoidable with a hypothetical removal of the USO.

### **URCA's final decision**

The relevant costs that the Universal Service Provider should use in its calculation of its Universal Service Obligation should be:

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

URCA will prepare further details through its forthcoming guidelines on the various components to be included in the net-avoidable cost calculation.

### **4.23 Direct and Indirect Revenues in Net USO Cost**

**Question No. 23:**

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

#### **BTC's Comments**

Whilst BTC had no objection to URCA's proposal in relation to USO telephony and internet services, BTC commented that it was equally important for URCA to include the out-payments to interconnecting parties as part of the net USO cost calculation. BTC further commented that it is not just the revenues that are derived from calls terminating to unprofitable islands or customers but there are out-payments when these unprofitable islands and customers place calls to customers of other licensed operators, and should there be a traffic imbalance (i.e., more outgoing calls to a customer of another network), the results can be a net cost increase for BTC.

#### **CBL Comments**

While CBL agreed with URCA's proposal, CBL requested that URCA provide guidance on the direct and indirect revenues that are relevant to each type of USO service – including new USOs such as cable television and internet services. More generally it invited URCA's to give further consideration to the adoption of a NAC approach to the calculation of the net cost of a USO cable TV service. .

CBL also stated that any NAC calculation for the USO cable TV provision should, in any case, take into account the revenue losses arising from existing customers migrating to a cheaper USO Basic Television package. As a means to reduce the scope for such downward migration, CBL

proposed that URCA consider restricting eligibility for the Basic Television USO Service only to designated needy households in similar manner to BTC's discounted residential monthly telephone subscription to qualifying senior citizens.

### **URCA's response to comments**

URCA is in agreement with BTC that the out-payments to other networks from unprofitable customers and islands should be included in the net USO cost calculation, given that this cost would be avoided where the USO is absent.

In relation to the calculation of the net cost of a USO cable television provision, URCA accepts that further guidance is warranted and will provide such guidance in line with URCA's previous response under Section 4.22 above.

URCA recognizes the lack of precedent in the application of the NAC concept to a cable television operator. URCA will work next on the details of an NAC application to cable television<sup>50</sup> and as part of this, due consideration will be given to the materiality and possibility of subscribers migrating from one product to another (cheaper) product.

URCA rejects CBL's proposal that measures be put in place to limit potential migration by existing customers or to impose restrictive eligibility criteria for the Basic Television Service. This is because the Comms Act requires that the mandated package should be available to all populated areas and specified institutions and imposing restrictive eligibility criteria would be *ultra vires* the Comms Act.

### **URCA's final decision**

The direct/indirect revenues that are to be included in the NAC of basic telephony provision are:

#### **Direct**

- The one-off-connection (installation) charge incurred in the relevant financial year under review for a USO funding application;
- Monthly access (line rental);
- Reconnection charges (where applicable);

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<sup>50</sup> The NAC concept is also used in the context of USO postal services. The features of the application of the NAC concept in post are different to the features of the applications undertaken in telecoms. Industry specificities are taken into account as one develops an application methodology of a NAC concept.

- Call revenues inclusive of local, domestic long distance, international, directory enquiries and premium rate services derived from direct or indirect (pre-paid calling cards) dialling;
- Internet services inclusive of dial-up and broadband; and
- Value added services (call management services - voice mails, call forwarding, etc.)

#### Indirect

- Net Revenues from incoming domestic calls;
- Net Revenues from inbound international calls to “USO” customers;
- Where relevant receiving party pays revenues;
- Wholesale interconnection revenues which incorporate fixed termination and transit services as a result of calls originating from residential customers of non-USP networks ;
- Leased lines (retail and wholesale) revenues,;

Within its forthcoming guidelines URCA will identify the equivalent direct and indirect revenues in relation to the USO provision of payphones and cable television.

#### **4.24 Efficiency Adjustment to Net USO Cost**

**Question No. 24:**

*Do respondents agree with URCA’s proposal to make an efficiency adjustment based on any annual productivity gains the USPs achieve?*

#### **BTC’s Comments**

BTC commented that BTC’s cost efficiency is the subject of a separate Public Consultation and BTC reserved any comments with respect to a discussion on efficiency adjustment.

#### **CBL Comments**

CBL agrees that, in estimating net USO cost, an efficiency adjustment may be necessary.

Technically, CBL sought further clarity on the meaning of “annual productivity gain”. In particular, it asked whether the scope for efficiency should be based on a USP’s total or partial productivity assessment, or some other approach. In CBL’s view, any such adjustment should be fact-based and not subjective. CBL suggested that URCA should clearly specify the approach it would take in respect to any assessment of efficiency adjustment and apply the same on an equivalent basis using appropriate USP-specific information.

However, CBL disagreed with the proposal that it would be for USPs to demonstrate the reasonableness of the magnitude of the efficiency adjustment, if applicable. CBL was of the view that the assessment of efficiency should be URCA's responsibility.

### **URCA's response to comments**

The funding of a net cost has to be that of an efficient provision of the USO. To the extent that a USP operates in a newly liberalised market, the USP may be sheltered from active competition and allowed a degree of inefficiency in its operations. As a result, the amount compensated would be lower than the calculated net cost of the USO to provide incentives to the USP to continually improve upon efficiency if competitive pressures are not fully effective to date. URCA would therefore consider carefully the circumstances of each case to ascertain whether such efficiency adjustment to a calculated net cost of the USO would be necessary.

URCA's preference would be to assess a USP's efficiency using the total factor productivity approach because this approach take into account the full range of inputs used and outputs produced by the operator. However, due to data availability, URCA recognises this is approach might not be feasible. As such, a partial efficiency approach which seeks to overcome this likely limitation by focusing on specific input-output ratios may be more appropriate.<sup>51</sup> Whilst URCA has previous experience of assessing the efficiency of BTC operations, URCA has not, at this time, undertaken an efficiency study for CBL and is therefore not able to ascertain whether a total factor productivity approach could be implemented. It therefore intends to reserve judgement in this consultation on the exact form any efficiency analysis should take.

Despite this, URCA maintains the position that BTC and CBL should compute their respective NAC, with the adjustment made for efficiency in accordance with the guidelines to be developed and implemented by URCA in due course. URCA has considered CBL's argument for URCA to conduct the efficiency assessment and rejects the notion that URCA is shifting the regulatory burden to the USP. It is URCA's view that the designated USPs will have at its disposal all relevant information and data necessary to demonstrate to URCA that the NAC is computed to reflect efficient costs. URCA will include in the guidelines for the implementation of NAC (see Question 22) the methodology for the assessment of efficiency of the NAC.

### **URCA's final decision**

URCA reaffirms that the NAC calculations developed by the USPs should reflect an efficient level of costs incurred in providing universal services.

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<sup>51</sup> See ECS 04/12 for a comprehensive review of the approaches to determining efficiency and the associated challenges.

The USPs will be required to compute their respective NAC, with the adjustment made for efficiency in accordance with guidelines on NAC methodology

#### **4.25 Inclusion of Intangible Benefits in Net USO Cost**

**Question No. 25:**

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

#### **BTC's Comments**

BTC commented that:

- There is an inherent challenge in calculating intangible benefits. BTC commented that it is difficult to assess the value of Brand and the value of access to market information.
- With liberalization of the sector it would become increasingly difficult to capture the intangible benefits of Life Cycle effects, Volume discounts and Brand Value.
- If the proposed intangibles could have been captured and appropriately assessed, there would be no need for regulatory intervention for USPs to provide services in some areas.

In addition to the foregoing measurement challenges, BTC explained that intangible benefits are not pertinent in the net cost calculation of USOs in The Bahamas, as follows:

- Enhanced Brand Recognition/Corporate Reputation has no relevance in The Bahamas. This view is premised on BTC continuing to be perceived by the public as a government entity and therefore an extension of government's social policy.
- Ubiquity may not be applicable in small markets like The Bahamas and where the competitors cherry pick the more profitable services and provide those services to customers as they move to the more profitable areas.
- BTC has a better chance of retaining customers when they become profitable (Life Cycle), and envisages a challenge in quantifying the Life Cycle net benefit, more so in The Bahamas where the absence of income tax makes it difficult to obtain reliable data to estimate the changing profile of households.



- Advertisements on public pay apparatus and the commercialization of customer usage are not benefits to be included as part of the net USO cost.

### **CBL's Comments**

CBL agreed that regulators in some jurisdictions use various forms of potential intangible benefits as part of the analysis. CBL commented that it is clear from URCA's survey of intangible benefits that both a significant degree of judgement and subjectivity is required and if URCA was to include one or more of the listed intangibles, URCA should clearly specify the nature of each along with fact-based supporting evidence. CBL referenced URCA's proposal of a ten per cent value to Brand recognition, noting that this was not supported by fact-based evidence and argued that URCA's proposal demonstrated disregard for reasoned decision-making.

### **URCA's response to comments**

URCA notes that both CBL and BTC agree with the conceptual approach of the inclusion of intangible benefits in the NAC calculation. In that context, URCA notes that the profitability cost approach to be used for the estimation of the cost of universal service requires a separate assessment of intangible benefits to the calculation of the NAC.

URCA accepts that the proposed approaches for calculating intangible benefits are, for the most part, country specific and may depend on the type of data readily available and/or accessible. In that context, URCA agrees with CBL that the calculation of intangible benefits involves some judgement and subjectivity. However, the literature and international experience suggests that computation of these intangibles is not insurmountable. By way of illustration, the value of Brand can be a proxy for the USP's corporate goodwill which URCA did in fact use to derive the 10% presented in Section 4.1.4 of ECS 12/2012.

URCA does not agree with BTC's argument as to the applicability of the intangible benefits not being relevant during the initial stages of competition. It is URCA's view that the mechanisms for the computation of the intangible benefits should be in place for the assessment of the NAC, and where the value of the identified intangible benefit is negligible, that should be stated and demonstrated in the NAC calculation. As an example, advertisements on public pay apparatus may not be done currently; however, this may change as the market develops and the value thereafter becoming non-negligible.

URCA is unable to confirm BTC's comment that the public at large continues to perceive BTC as a government entity and an extension of government's social policy. This is because BTC has not provided any data to substantiate its comment. In fact, the available information both in the public media and at URCA does not support this statement. URCA notes that the intangible "Ubiquity" is closely correlated with migration patterns and that the imposition of a uniform price for the universal services coupled with the imposition of a surcharge on all relevant

licensees negates cherry picking, especially as a competitor can only capture a market segment if it is more efficient than the designated USP. URCA notes BTC's acknowledgement of the positive impact of life cycle on BTC.

As part of its guidelines, URCA will consider the applicability of intangible benefits in the context of newly introduced USO services such as USO basic TV.

### **URCA's final decision**

In principle, an adjustment for the intangible benefits to the calculation of the net cost of the USO is necessary. Four intangible benefits are to be considered looking forward:

- Enhanced Brand Recognition/Corporate Reputation
- Ubiquity.
- Life Cycle Effect.
- Marketing.

## **4.26 Methodology for Calculating Intangible Benefits**

### **Question No. 26:**

*What method or combination of methods for calculating each of the specific benefits detailed in Section 4.1.4 of the Public Consultation document do respondents consider to be the most appropriate?*

### **BTC's Comments**

BTC commented that with the exception of Payphone Advertising (which is not carried out in The Bahamas), the calculation of the intangible benefits are not appropriate for a market in the early throes of liberalization (e.g., Bahamas). BTC commented that URCA's sample size is limited and no account is taken of practices in countries similar to The Bahamas. BTC referenced the former telecommunications regulator (Ofcom) in the UK where Ofcom and BT were at odds with respect to the estimation of these benefits.

### **CBL's Comments**

CBL stated that none of the intangible benefits discussed in the consultation pertains to cable television operators and in virtually all cases they relate to large incumbent carriers in the EU which are much larger than carriers in The Bahamas. In CBL's view, this strengthens the case to remove the USOs imposed on CBL.

CBL noted that the accounting separation guidelines require cost-effectiveness in cost accounting and was of the view that using any cost adjustment proxies (intangible benefits)

would appear to contravene that principle. CBL expressed concerns with the calculation of intangible benefits and stated that it was not clear to CBL whether the proposed benefits are mutually exclusive or have any real possibility of materializing, that the cost of making these assessments would be exorbitant for URCA and USPs alike and the burden of completing the calculations would be wholly disproportionate.

CBL stated that URCA's over reliance on the EU precedents leads to a methodology bias, and cited the counting of intangible benefits in assessing unfair benefits. CBL noted that regulators in USA, Canada, Australia, and New Zealand do not take account of intangible benefits when measuring the cost of universal service. CBL also contended that URCA failed to include any developing markets in its research or any other Caribbean island and that URCA's research may not have included an examination of the reasons why USF are not in operation in most Caribbean jurisdictions.

CBL is of the view that URCA's approach to the calculation of brand recognition was entirely arbitrary and it was not clear to CBL as to what other countries (other than the EU), especially Caribbean countries, may do in calculating Brand recognition. With respect to Ubiquity, CBL commented that CBL does not understand how the proposed per-line net contribution to profit could be reliably calculated or how it relates to the valuation of Ubiquity.

CBL reasoned that the calculation of Life Cycle benefit would be highly complex and ultimately inaccurate, and would not take account of households who were profitable but became unprofitable when services were either discontinued or usage levels reduced and the loss of profitable customers to competitors. CBL commented that in the calculation of marketing effects, URCA focused on the commercialization of customer usage data and equated the benefits of such data to the net revenues derived from that commercialization. CBL stated that it was not clear how URCA intended to estimate the net revenue derived from the commercialization of usage data, which in CBL's view would be highly complex to implement and highly subjective.

#### **URCA's response to comments**

URCA has included the intangible benefit as a component of the revenues for NAC calculation and the derived values for said benefits (non-negligible/negligible) would be included in the NAC calculation. This therefore means that the appropriate value would be included irrespective of the degree of market liberalization that may exist at the time of calculating the NAC.

Universal service regulations in Anguilla<sup>52</sup> and the Turks and Caicos Islands<sup>53</sup> have included the intangible benefits in the NAC methodology. However, neither country has done an actual calculation of intangible benefits. However, URCA considers that the intangible benefits identified in this consultation, may be included by Anguilla and the Turks and Caicos Islands, given that these benefits have been used by the majority of EU countries.<sup>54</sup> URCA is also aware that the HIPCAR USO project which comprised of 10 participating Caribbean countries<sup>55</sup> included in the model Legislative Text consideration for the inclusion of intangible benefits in the calculation of the net cost of universal service.

URCA accepts that internationally the NAC calculation, inclusive of the intangible benefits, is used primarily in relation to USPs in the telecommunications industry. However, as previously mentioned by URCA at Question 23, there are no economic grounds, in URCA's view, that hinder the application of the NAC concept to cable TV USPs.

The separated accounting guidelines applicable to CBL and BTC address the cost effectiveness in cost accounting. Section 2.1.4 of ECS 13/2010 clearly identifies the context of URCA's requirement to observe cost-effectiveness.<sup>56</sup> Separated accounts are used to inform pricing decisions for price regulated services offered by BTC and CBL. In contrast, the NAC methodology will be used to assess the profitability of services for the purposes of USOs (offered to unprofitable islands/customers). Integral to the NAC calculation is an assessment of the benefits (tangible and intangible). This approach satisfies the cost-effectiveness principle which requires "the costs of providing any additional information for regulatory purposes should be proportionate to the benefits that it delivers". This means the NAC calculation is in itself an assessment of cost-effectiveness. Thus, there is a need to assess both types of benefits and, where necessary, a negligible value can be an input for any or all of the intangible benefits.

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<sup>52</sup> Section 15 of Anguilla's Universal Service and Public Telecommunications Regulations, 2004.

<sup>53</sup> Section 16 of Turks and Caicos Islands Universal Service and Public Telecommunications Regulations, 2005.

<sup>54</sup> Other than those identified in ECS 12/2012, the use of these variables for estimating intangible benefits have been used in Australia (OVUM. 2000. Calculation of the Intangible Potential Benefits of being the Universal Service Provider- Final Report. A Report to the Australian Communications Authority) and New Zealand (Dot.Econ. 2003. Quantification of Intangible Benefits of the TSO- Review of a Report Prepared by CRA on behalf of Telecom New Zealand).

<sup>55</sup> Barbados, Dominican Republic, Grenada, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Surinam and Trinidad and Tobago.

<sup>56</sup> Section 2.1.4 of ECS 13/2010 states:

"Leading practice regulation suggests that the costs of providing any additional information for regulatory purposes should be proportionate to the benefits that it delivers. It is important that additional requests, particularly as they relate to the level of granularity or detail in reporting, are considered in this context."

URCA understands that one of the two sources from which Ubiquity benefits arise is when customers migrating from high cost areas to low cost areas choose to keep the USP operator as its telephony/ internet provider.<sup>57</sup> Where proper records are kept, it should be possible to identify customers who migrate and continue to retain the services of the USP. This retention of customers thanks to the USP status has a value that has to be considered in the benefits of such intangible.

### **URCA's final decision**

The most appropriate method or combination of methods for calculating intangible benefits in the derivation of the NAC are:

- Enhanced Brand Recognition/Corporate Reputation – estimated at\_10% of the USP's retail advertising and sales expenditures.
- Ubiquity – estimated as the per-line net contribution to profit of customers or households who migrate from high cost to low cost areas.
- Life Cycle Effect – estimated by the\_net value of the number of households that switch from being unprofitable to profitable as income grows and the difference between the cost of customer acquisition and customer retention as barriers to switching are removed.
- Marketing – estimated from, where applicable, commercialization of customer usage data

These approaches will be further considered and fleshed out in the guidelines on how to calculate the net cost of the USO.

## **4.27 Determination of an Unfair Financial Burden**

### **Question No. 27:**

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

### **BTC Comments**

BTC had significant reservations and objections to the use of a market share threshold of 80% as a primary determinant in assessing unfair burden. BTC's reservations and objection were premised on BTC's belief that further liberalization of the market provides opportunities for

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<sup>57</sup> The other source is Customer with multiple presence or establishments explicitly choosing to take service from the USP which has a presence in all areas in order to be able to procure services from a single provider.

competitors to cherry pick the more profitable services, while the USP is stuck with the less profitable services.

### **CBL Comments**

CBL indicated that it was not opposed to URCA's proposal but believed the establishment of such a threshold should not preclude a USP from applying for USO funding where the USP believes it can make a reasonable case that it is in fact bearing an unfair burden. CBL further commented that different parties may disagree on the definition of the relevant market, especially in view of the rapid changes in the ECS, and how market share should be calculated (revenues, minutes, connections, subscribers, etc.).

### **URCA's response to comments**

URCA notes BTC's reservations in respect of the proposed market share threshold. The market share of 80% is taken as an indicator that the revenues of the USP have not been fully contested by competition. One can presume therefore that the USP may be able to self-fund the net cost of the USO – if applicable. It is true that when the USP cannot rely on profitable USO and non-USO revenues to fund loss making USO provision as these revenue streams face fiercer competition, one expects the revenue market share of the USP to fall further - below 80%. Under this scenario, URCA agrees that a fuller assessment of the unfairness of the financial burden borne by the USP is warranted. URCA agrees with CBL that the use of the prescribed threshold should not preclude a USP from applying for USO funding given that URCA stated in Section 5.1 of ECS 12/2012 that it would be a requirement upon the USP to demonstrate that it faces an unfair burden if the USP's threshold is above 80% (measured on the basis of revenues). The final point to be noted on this issue is that the market share in relation to universal service is generally specific to access, where access would typically be measured by the number of connections.

### **URCA's final decision**

URCA will use a two stage approach to the possible determination of an unfair financial burden. The first stage relates to the market share threshold at which URCA will commit to undertake an analysis of whether an unfair financial burden exists. The second stage is the analysis itself and the approach discussed in Section 4.29 below.

The threshold for the determination of an unfair burden will be set at 80%. Where the USP's market share is 80% and greater, the presumption is that no unfair burden exists. The USP would have to demonstrate that it faces an unfair burden whilst having a market share greater than 80%.

Where the USP's market share is less than 80%, URCA will assess whether an unfair burden exists.

#### **4.28 Cost of Administering USF Relative to the Net Transfer to USP**

**Question No. 28:**

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

#### **BTC's Comments**

While BTC agrees in principle with URCA's proposal, BTC commented that there is a need to ensure that there is transparency with respect to the cost associated with administering the USF. BTC restated its 2009 position that the USF be independently administered (i.e., BTC's comments to the USO Public Consultation conducted by the Committee for the Privatization of BTC in 2009).

#### **CBL Comments**

CBL agreed with URCA's proposed approach.

#### **URCA's response to comments to Question28**

URCA considers that URCA's assessment of the cost of establishing the USF against the net transfer to the USP should be disclosed to the USPs and the communications sector. URCA corrects an error under this proposal in the Consultation document. That is the "cost of administrating the USP" should have read "cost of administering the USF".

#### **URCA's final decision**

In instances where the regulatory costs of administering the USF are disproportionate to the net transfer to the USP, the USP will bear the net USO cost. URCA will disclose to the USP and the communications sector its assessment of the cost of administering/establishing the USF against the net transfer to the USP.

## 4.29 Assessment of USP's Financial Position Relative to Unfair Burden

### **Question No. 29:**

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

### **BTC's Comments**

BTC stated that it does not support URCA's position and commented that where a net cost for the provision of USO exists, this should trigger the steps for accessing funds. In BTC's view, URCA's proposal would involve BTC cross subsidizing its USO services with non-USO Services, which BTC does not support.

### **CBL Comments**

CBL agreed with URCA's proposal but noted that the proposed USO funding eligibility criterion is vague and subjective. CBL commented thereafter that it was not clear as to what URCA considered to be a "fair" overall ROCE or, alternatively, a "fair" non-USO service related ROCE and therefore, what precise profitability test criterion would be used to determine whether a USP would be eligible for USO funding. CBL suggested that URCA specify the threshold profitability level or impact that it would rely on and the basis for that threshold so that USPs would have a clear understanding of that aspect of URCA's proposed USO funding eligibility test. CBL further stated that the ROCE determined by URCA for price regulated services would not be appropriate in the case of non-price services.

CBL expressed two concerns with URCA's proposed profitability test:

- Reliance on annual profit performance as a USO funding trigger could create significant uncertainty especially where profits can fluctuate from year to year as a result of factors which are outside the control of the USP (e.g., economy-wide recession).
- The proposed ROCE-based criterion could have the perverse incentive of rewarding an inefficient USP with low profitability on its non-USO services relative to an efficient USP with higher profitability on its respective non-USO services. This could potentially lead to inconsistent and unfair funding of one USP but not another.



### **URCA's response to comments**

URCA does not agree with BTC that funding from the USF should be automatic where a net cost to the provision of the USO exists. As outlined in Section 5.2 of the consultation, the objective of the USP's financial position is for URCA to robustly determine whether the USO is undermining the USP's profitability in the prevailing market circumstances and that the USP is able to earn its regulated cost of capital applicable to designated universal services.

URCA believe a reasonable starting point would be to apply the same cost of capital to all services offered by a USP, unless the USP can demonstrate that there are clear and [potentially substantive] differences in their cost of capitals for the USO and non-USO parts of its business.

URCA accepts CBL's argument that, at least in theory, profitability may vary significantly from one year to the next. This may particularly be the case when examining "accounting" profits, in the situation where accounting adjustments are made which affect profit figures. However, URCA expects that economic profitability may be more stable, especially when measured over a longer period of time.

URCA notes that CBL's argument is couched in terms of the relative efficiency of the two operators. As previously stated in Section 4.24 above, the USP's efficiency is reflective in the assessment of the NAC and where that assessment suggests a USP is operating below a reasonably efficient level and/or that the USP's return on non-USO services are restricted (i.e. the USP's eligibility for funding), URCA would take those into account and act accordingly. In addition, it is also URCA's view that the assessment of the USP's financial position is included to identify if an operator is able to support the delivery of USO services via revenues from other services. Where a USP is not able, due to competitive pressure, to self-finance its USO, this would be reflective in the assessment. Consequentially, a financing requirement from the USF would be required and the imposition of such a requirement (universal service levy) would ensure that USP's commercial viability is not compromised.

### **URCA's final decision**

Where the regulatory cost of administering the USP are not disproportionate to the administrative cost of establishing the USF, URCA will examine whether or not the USP is able to achieve a fair rate of return on capital employed (ROCE) and the extent to which the USPs can rely on revenues from non-USO services to support the provision of the USO services.

### 4.30 Criteria for Assessment of Unfair financial Burden

**Question No. 30:**

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

#### **BTC's Comments**

BTC fully supports a more dynamic analysis of competition in the market when assessing unfair burden.

BTC suggested that while it is difficult to assess, URCA in its competitive assessment also take into consideration unlicensed or illegal providers of services, particularly VoIP offerings.

#### **CBL's Comments**

CBL agreed with URCA's proposal; but stated that URCA should take into account competitive developments and their impact on a USP and its ability to self-finance its USOs. CBL also agrees with the criteria specified by URCA under this proposal.

#### **URCA's response to comments**

URCA notes that both BTC and CBL agree with URCA's approach.

URCA agrees with CBL that competitive developments and the impact on the USP's ability to self-finance its USOs be taken into account. In that context, URCA agrees in principle with BTC that the competitive impact of unlicensed or illegal providers of services be considered. However, URCA's experience suggests that this might be difficult to achieve given information asymmetry in the marketplace.

#### **URCA's final decision**

The assessment of competitive distortion will have regards to the following criteria,

- changes in prices over time;
- changes in market share and/or changes in related markets; and
- market entry barriers.

### 4.31 Separate Universal Service Funds for Designated USP

**Question No. 31:**

*Do respondents agree with URCA's proposal to establish separate USFs for each designated USP?*

**BTC's Comments**

BTC commented that while the Funds can be separate, it was important that there be transparency and autonomy in the management of the Funds. BTC further commented that it was of the preliminary view that there are some administrative costs that can be shared in the management of the Funds that would prevent duplications of efforts. BTC recommended that costs for administering the Fund should be capped as a percentage of the Fund and that the administrative cost should not exceed the cap.

**CBL's Comments**

CBL sees no valid administrative reason or rationale for the establishment of separate USFs for each designated USP. CBL is similarly not aware of any other jurisdiction that has separate USFs for each designated USP.

**URCA's response to comments**

URCA was not able to find any precedent of multiple USFs in the telecommunications sector. URCA has therefore reconsidered its view as stated in this consultation and would establish one USF. However, for purposes of transparency and accountability the monies designated for the various universal services will be held in separate accounts, but under one Fund.

URCA agrees with BTC that there are some administrative costs that can be shared in the management of the Fund that would prevent duplication of efforts. Regarding BTC's proposed cap on administrative costs, URCA is already mandated by the URCA Act to manage its resources efficiently and this includes its management of the Fund. Further, URCA agrees that the Fund should be managed in an efficient and cost effective manner but at this time does not have sufficient information in Fund management to determine what is an appropriate level to establish such a cap. Going forward, URCA proposes to review that position as more reliable information becomes available.

## **URCA's final decision**

URCA will establish one USF. However, for purposes of transparency and accountability, URCA will establish separate accounts under one Fund into which monies will be deposited from USPs operating in separate markets. The full design of this Fund will be determined at a later date.

### **4.32 Percentage Contribution to the USF**

#### **Question No. 32:**

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

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

#### **BTC Comments**

BTC is in agreement with the exclusion of revenues earned by the licensee for services other than those covered by their licence. BTC however stated that the exclusion of revenues earned by a licensee from operations outside of The Bahamas was ambiguous and referenced roaming where the service can be provided within The Bahamas but governed by an external contractual relationship.

BTC further commented that the accumulation of unspent funds from previous years should be used to help offset the contribution from USPs.

#### **CBL Comments**

CBL is opposed to the financing of the USF via mandatory sector contributions and is of the view that Government funding is the most efficient and practical manner to finance any USF requirement that may exist. CBL further contended that no monies be appropriated until there is a proven need to do so (i.e., a net cost has been reviewed and approved). CBL commented that international experience suggests that where monies are appropriated in advance there is an imbalance against disbursement – more monies are appropriated than disbursed, thereby making USO funding stranded. CBL therefore submitted that an established percentage of revenue charge should be set precisely to recover any eligibility net USO costs reviewed and approved by URCA and any inadvertent surplus or deficit in the USF at the end of the administrative/management cycle should be set-off against future payments to the Fund. This is

to guard against the USF being used to accumulate monies for possible future USO funding requirements or transferred to the Public Treasury for other purposes.

CBL commented that where the USP payment scheme was to be lawfully implemented, CBL was in general agreement with the proposed approach should URCA implement such and suggested that inter-carrier payments incurred by a licensee (interconnection charges, leased line charges) should be deducted from the Total Relevant Revenues (TRR). This would avoid the risk of double counting of “contribution-eligible revenues across licensees”. CBL also contended that any lawful scheme should be objective, non-discriminatory and fairly administered.

### **URCA’s response to comments**

Both respondents are in agreement with URCA’s approach. URCA agrees with CBL’s position that payments into the Fund should not be appropriated until there is a proven NAC and the percentage of revenues charged should equate the eligible net USO cost plus the administrative costs of managing the Fund. URCA also agrees that the USF should not be used to accumulate monies for possible future USO funding requirements and that any net surplus/deficit should be set-off against eligible contributions for the following period.

URCA is aware that in the USA the revenue obtained by a carrier from customers ‘roaming’ on the carrier’s network is included in the revenues for the USF.<sup>58</sup> International precedent therefore exists for inclusion of any revenues derived from use of the domestic infrastructure to make and receive calls by roamers. In that context, it is URCA’s view that revenues derived from persons roaming in The Bahamas should be included in the revenues for calculating the contribution to the USF.

URCA notes CBL’s comment on the exclusion of inter-carrier payments. Under URCA’s proposal as set out in Section 3.1.2 of the consultation, net revenues for incoming domestic calls to the USP’s network, wholesale and retail revenues derived from leased lines (wholesale and retail), and interconnection revenues are included in the NAC calculation. It is evident, therefore, that revenues derived from these sources also be included in the calculation of TRR.

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<sup>58</sup> See FCC’s 2012 Telecommunications Reporting Worksheet Instructions. Available online at <http://www.universalservice.org/res/documents/cont/pdf/forms/2012/form-499A-fy2012-instructions.pdf>. See also the various State Commission, e.g. Vermont Fund Administration Universal Service Fund Instructions. Available online at <http://www.r-l-s-a.com/Vermont/VTUSF2012-2013instructions.pdf>. South Carolina’s Office of Regulatory Staff 2012 Universal Service Contribution Worksheet. Available online at <http://www.regulatorystaff.sc.gov/TTWWW/2012%20South%20Carolina%20Universal%20Service%20Fund%20Contribution%20Worksheet%20Instructions.pdf>.

### **URCA's final decision**

For the purposes of the USF, URCA will appropriate a percentage contribution from licensees that equates to a licensee's contribution to the total industry Total Relevant Revenues for the purposes of recovery of the net avoidable cost to the funding of universal services. Total Relevant Revenues (TRR) for the calculation of contribution would **exclude**:

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

Revenues derived from inbound roamers, incoming domestic calls to the USP's network, wholesale and retail revenues derived from leased lines (wholesale and retail), and interconnection revenues are to be included in the TRR.

### **4.33 Contribution Exemption Threshold from USF**

**Question No. 33:**

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

#### **BTC's Comments**

BTC had no objection to URCA's proposal but commented it was important that URCA carry out the necessary due diligence to ensure that there is transparency of the relevant revenues for the smaller operators.

#### **CBL Comments**

CBL does not agree with URCA's proposal. CBL contended that the fee arrangement for USOs should not be allowed to further tilt the regulatory playing field in favour of operators that are already exempted from Communications Licence Fees, URCA Fees and other charges imposed on CBL. CBL commented that the exemption proposed by URCA implies that all licensees would have to supply URCA with relevant revenue information in order to qualify for exemption, and should this be the case, URCA could just as easily levy the applicable universal charge as provide an exemption. CBL suggested that URCA can alternatively impose a minimum USO contribution fee as part of an exemption test for smaller licensees.

### **URCA's response to comments to Question 33**

Pursuant to s. 5(c) of the Comms Act, URCA has a statutory duty to ensure that regulatory and other measures are efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory. URCA will continue to adhere to this requirement, inclusive of the implementation of any exemption to the USF.

URCA does not disagree with CBL's comments and suggestion that URCA impose a minimum fee. However, URCA is duly cognizant that the Comms Act requires URCA to promote investment and innovation in the ECS and to encourage competition. In keeping with that remit, URCA is of the view that imposing a contribution obligation at this time on small operators may hasten their exit from the ECS market in The Bahamas. URCA will therefore not impose such obligation at this time but reserves the right to do so in the future. URCA therefore maintains its current position and will exempt a licensee whose TRR is less than B\$50,000.

### **URCA's final decision**

The minimum threshold below which a licensee whose Total Relevant Revenues is less than B\$50,000 will be exempt from contributing to the universal service fund. URCA proposes to review this minimum threshold every three (3) years to ensure consistency with the development of competition in the pay television, telephony and internet markets.

## **4.34 Structure and Operation of the USF**

### **Question No. 34:**

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

### **BTC's Comments**

BTC did not object to URCA's proposal but commented that the USF should be administered by a separate legal entity outside of URCA and that entity should have the responsibility for investing any surplus and using the interest generated from investment to defray the cost of operations.

### **CBL Comments**

CBL stated that should there be a need to establish a USF, such account(s) should be audited and published annually. CBL further stated that the USF should be separate to URCA's operating account with the USF being a single account for all operator and all sectors.

### **URCA's response to comments**

URCA notes that, under s. 44(3) of the Comms Act, there would be a statutory requirement for URCA to administer the USF. URCA considers that it should administer the USF until such time as it supersedes the decisions made in s. 119(1) of the Comms Act.

CBL's comments on structure and operations of the USF are generally in line with URCA's own proposals as stated in Section 6.2 of ECS 12/2012.

### **URCA's final decision**

URCA will open separate accounts for universal service and will annually have those accounts audited and publish audited statements.

## **4.35 Administration and Management Cycle of the USF**

### **Question No. 35:**

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

### **BTC's Comments**

BTC had no objection to URCA's proposal.

### **CBL's Comments**

CBL agrees with URCA's proposal but commented that the USO funding filing requirements under URCA's proposal are very detailed and extensive, and suggested flexibility in the filing time frames.

### **URCA's response to comments**

URCA does not agree with CBL that URCA's proposal under this part is very detailed and extensive. URCA reminds CBL that URCA in response to CBL's comments at Question 32 stated that the USF should not be used to accumulate monies for possible future USO funding requirements and that any net surplus/deficit should be set-off against eligible contributions for the following period. It is URCA's view that an annual cycle for the administration and management of the Fund would be most suitable to assessing the level of contribution to the Fund. URCA's position in this regards is consistent with CBL's stated position at Question 32.



URCA is also of the view that the prescribed time period proposed in this consultation (i.e. 9 – 11 months)<sup>59</sup> is sufficiently lengthy for a USP to submit to URCA its claim for financing its designated USO. The lengthy time period ensures that the submitted funding request is premised on the most recent audited separated accounting information.

URCA has also looked at the international experience which suggest that, in general, the filing requirements governing the financing of a universal service project are generally prescriptive as evidenced, for example, by the FCC's 2012 Telecommunications Reporting Worksheet Instructions; the Vermont Fund Administration Universal Service Fund Instructions; South Carolina's Office of Regulatory Staff 2012 Universal Service Contribution Worksheet<sup>60</sup>; and St. Vincent and the Grenadines SMART Projects, Police and Health Projects and Community Centers Project.<sup>61</sup>

### **URCA's final decision**

The administrative and management cycle of the USF will follow the calendar year and any request for funding must be submitted to URCA on an annual basis, within one month of the publication of relevant audited separated accounts but no later than eleven months following the end of the USP's financial period.

## **4.36 Requirement to provide Sufficient Information for USF Compensation**

### **Question No. 36:**

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

### **BTC's Comments**

BTC objected to this proposal and commented that it runs counter to the earlier proposal which outlined the conditions under which a USP can access funding from the USF. BTC commented that URCA's proposal under Question 36 introduces another layer in the approval process by

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<sup>59</sup> SMP Licensees are required to publish their respective separated accounts 8 month after the SMP Licensee's financial year. See ECS 18/2012.

<sup>60</sup> Ibid 58.

<sup>61</sup> See St. Vincent and the Grenadines Universal Service Fund, available at <http://www.ntrc.vc/index.php/usf>

providing URCA with the latitude to reject a claim if the information is not 'robust'. BTC was not clear in this context on the definition of 'robust'.

### **CBL's Comments**

CBL contended that there should not be an automatic cancellation of a USP's application for funding. CBL commented that the process to review a USP's application is not only unclear but that such a process may be lengthy and the quality and validity of information may be subjected to debate. CBL further commented that it was similarly unclear as to what might constitute a failure to provide sufficiently robust information in support of a USO funding application at this juncture. CBL contended that it was also not clear whether it was within URCA's powers to deny an application for USO funding where the applicant fails to make a case for the existence of a USO funding requirement or where the applicant otherwise failed the associated eligibility tests for USO funding.

### **URCA's response to comments**

URCA does not agree with BTC that URCA's proposal runs counter to the earlier proposal which outlines the conditions under which a USP can access funding from the USF. URCA reminds BTC and CBL that, under s. 43(2) of the Comms Act, URCA would ordinarily have the statutory remit to consider all applications and determine whether to accept or deny an application. URCA will, under the current framework, therefore consider all applications for funding and may deny a funding request where the applicant fails to demonstrate the existence of a USO funding requirement or where the applicant otherwise fails any eligibility tests for USO funding that URCA may establish going forward.

As previously stated, USPs have the responsibility to calculate the NAC and to demonstrate unambiguously that an unfair burden exists. In guiding the calculating of their NAC, URCA as stated at Section 4.22 above, will provide appropriate guidelines to USPs.

URCA is of the view that during the informative years of establishing and implementing the existing USOs, some flexibility is required. URCA's reference to robust information is within this context of reliability and relevance of the information (quantitative and qualitative) such that all stakeholders can have confidence in the process.

URCA accepts the argument that in the initial years of development, the processes may be lengthy and the quality and validity of information may be subjected to debate. URCA has therefore reconsidered its position and would not automatically cancel the process for a given year where the USP failed to provide sufficient robust information to URCA for URCA's consideration. URCA would work with the USPs to refine the process and ensure the robustness of data submission over time. However, URCA will consider its position when URCA is satisfied

that there is adequate experience in the USO/USF financing processes that should result in the ability of USPs to submit and URCA to assess adequate, reliable and robust information.

### **URCA's final decision**

In the formative years of the USO, URCA will not automatically cancel the process of considering an application for funding for the net cost of the USO.

## **4.37 Administration of Contributions - Payment to the USF**

### **Question No. 37:**

*Do respondents agree with URCA's proposal that:*

- *Contributor licensees be required to submit to URCA financial statement of the Total Relevant Revenues within four (4) months after the end of their financial year;*
- *URCA issue on or before 30 days of receiving those financial statements, invoices to contributor licensees specifying the quantum of their contribution to the relevant Funds; and;*
- *Contributor licensees be required to make the necessary payment before the expiration of 30 days to the relevant USFs Accounts?*

### **BTC Comments**

BTC is firmly of the view that 60 days after the issuance of an invoice ought to be the required expiration period for payment into the relevant USF Account. BTC's position was informed by the proposed penalty for failure to pay by the expiration of the due payment date.

### **CBL Comments**

CBL stated that it was unclear in ECS 12/2012 as to the precise basis on which URCA would issue invoices to contributor licensees, given that CBL is of the view that licensees should be invoiced only after URCA had reviewed and approved the USO funding. CBL suggested that in the event the USO funding requirements were large, URCA should consider an invoicing process that allows for quarterly or even monthly payment of the required fees rather than a lump sum annual payment.

CBL commented that the contemplated sequencing of any eligible USO funding requirement is unclear and suggested that URCA clarify the contemplated USO funding requirement process and time line in the event a request for funding is approved.

### **URCA's response to comments**

URCA is of the view that the imposition of a penalty for late payment does not justify the lengthy 60 days period for the payment of contributions to the USF. URCA reminds BTC that the

Communications Licence Fee as set out in the Fee Schedule (ECS 25/2011) are to be paid to URCA within thirty (30) days of being invoiced and in the event of late payment, the outstanding amount attracts a statutory interest rate of 4% per annum over the prime lending rate as published by the Central Bank of The Bahamas.<sup>62</sup> URCA advises BTC and CBL that in like manner to the Communications Licence Fees, contributing licensee would be required to make payment to URCA which will be deposited by URCA into the relevant account of the USF.

As previously stated by URCA at Question 32, URCA is of the view that monies should not be appropriated until there is a proven NAC. In the context of implementation, licensees would not be invoiced until after a detailed review and approval of NAC and a need for funding has been established. Having reviewed CBL's comments and URCA's proposal, URCA has amended the proposal in Question 37 to provide for greater clarity in the invoicing process by replacing "receiving those financial statements" with "determining the existence of a NAC". It is also URCA's view that the financial statements should be audited.

URCA has given further consideration to the time period within which a Contributor to the Universal Service Fund is required to submit its financial statement of the Total Relevant Revenues. URCA recognizes the need to ensure consistency between time periods for a contributing licensee to prepare and audit its statutory accounts and its Total Relevant Revenues financial statement. URCA will finalise this period in the guidelines. URCA however maintains the two other aspects of the administration of contributions process:

- *Within 30 days of determining the existence of an NAC, URCA will issue invoices to contributors specifying the quantum of their contribution to the Fund; and;*
- *Contributors are required to make payment to URCA before the expiration of 30 business days from the invoice date.*

#### **URCA's final decision**

URCA will finalize in the guidelines the time period for the contributing licensees Total Relevant Revenues financial statement.

URCA has amended the invoicing process to provide greater clarity, as follows:

- *Within 30 days of determining the existence of an NAC, URCA will issue invoices to contributors specifying the quantum of their contribution to the Fund; and;*

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<sup>62</sup> See s. 94 of the Comms Act.

- Contributors are required to make payment to URCA before the expiration of 30 business days from the invoice date.

#### **4.38 Penalty for Late Payment to the USF**

**Question No. 38:**

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

#### **BTC's Comments**

BTC is of the view that the proposed interest rate of 3% above the prime rate appears quite excessive. BTC contended that URCA has provided no benchmark or basis for the use of 3% above the prime rate and that it would be useful for URCA to provide the basis for the 3%.

#### **CBL Comments**

CBL is not opposed to URCA's proposal.

#### **URCA's response to comments**

URCA considers the proposed 3% interest rate above the prime rates as reasonable when compared to the 4% applicable to the Communications Licence Fee under s. 94(1) of the Comms Act. URCA's proposal is also below any maximum applicable rate specified in the Rate of Interest Act. URCA therefore affirms its proposal to levy an interest rate of 3% on all outstanding payments due to the Fund.

#### **URCA's final decision**

The failure by a Contributor licensee to pay the required contribution on the due date will incur an annual interest rate of 3% above the prime lending rate, as notified by the Central Bank of The Bahamas, on all outstanding monies, until the full contribution is paid to the USF account.

#### **4.39 Administrative and Management Costs of the USF**

**Question No. 39:**

*Do respondents agree with URCA's proposal that the administrative and management costs be recouped through the contribution to the USF?*

### **BTC's Comments**

In principle, BTC has no objection to the administrative and management costs of the USF being recouped through the contribution to the USF but reiterated that there should be an incentive to contain costs by establishing an upper limit or cap to these costs.

### **CBL Comments**

CBL submitted that the costs of the administration and management of the proposed USO regime and related USF form part of URCA's on-going operating budget. In CBL's view, there is no need or rationale for introducing a new separate fee associated with URCA's USO-related activities.

### **URCA's response to comments to Question 39**

URCA does not oppose the imposition of a cap on costs for administering the Fund. However, URCA notes the practical challenges in implementing BTC's proposal at this time. For example, URCA does not have, at this time, sufficient information specific to The Bahamas to establish such a cap or access to benchmarking information from other jurisdictions. URCA, however, proposes to review the situation on a going forward basis to take account of experience and relevant information. URCA disagrees with CBL that the cost and management of the USF should form part of URCA's on-going operating budget. The establishment of a USF will require additional resources that are currently not reflected in URCA's operating budget.

### **URCA's final decision**

The administrative and management costs of the USF will be recouped through the contribution to the USF.

## **4.40 Definition of Market Based**

### **Question No. 40:**

*Do respondents agree with URCA's proposed working definition of Market-Based?*

### **BTC's Comments**

BTC commented that the term market based is not defined in the Comms Act and that the proposed definition in Section 6.6 of ECS 12/2012 provides little information as to the range of options available for funding USO.

## **CBL's Comments**

CBL was of the view that URCA's proposed definition is vague and general and that it further adds confusion rather than provides clarification.

### **URCA's response to comments**

URCA advises that that range of market based option available to URCA includes, *inter alia*, Smart Subsidies, Targeted Implicit Subsidy Obligation, Tradable USO and Franchising the USO. URCA does not propose to adoption of any market based option at this time. However, going forward, URCA reserves the right to consider appropriate market based options, inclusive of those previously mentioned and will notify the industry of its intent at the appropriate time. URCA does not agree that the definition is vague or confusing or provides little information to USPs. It is URCA's view that the definition of market-based in Section 6.6 of ECS 12/2012 allows for greater possibilities in the options, such that the designated USO and the chosen financing option are aligned to ensure competitive neutrality. In that context, URCA may apply specific rules or choose to waive such requirements. In so doing, URCA achieves the delicate balance between promoting investment and innovation [s.4(a)(ii)] and encouraging and promoting sustainable competition [s. 4(a)(iii)] as required under the Comms Act.

### **URCA's final decision**

Market-based funding shall have the following meaning:

"mechanisms whereby both the provision of the USO and the financing of the net cost of the USO are met by rules setting out how all service providers and users can operate in the electronic communications market."

## **4.41 Consideration of Market Based Funding Mechanisms**

### **Question No. 41:**

*Do respondents agree that URCA's proposal to consider various funding options inclusive of pure market-based, a mix of funding (market and USF) or pure Fund based funding?*

## **BTC's Comments**

BTC had no objection to URCA's proposal but commented that in 2009, BTC had indicated that it would consider what was termed at that time, tradable USO (the option of providing the USO or paying another operator to provide the USO), which should be considered.

## **CBL's Comments**

CBL commented that various funding approaches should be considered much earlier in the process but noted that market based approaches are better suited for network build rather than maintenance. CBL further commented that URCA made no distinction in its proposal of how and when market based or mixed funding may be used in The Bahamas. CBL referenced the pay or play mechanism which CBL stated was inconsistent with the interim USO and USP designation (i.e., how a USP designated to provide a particular USO service to all populated areas would avail itself of any such approaches). CBL was not sure whether the pay or play mechanism means that a designated USP can contract out the provision of service for a particular island to a third party by paying that entity a certain amount of subsidy. CBL further enquired as to how and by whom would the net USO cost be calculated in a pay or play environment and whether the USP (third-party or otherwise) would be eligible for compensation in such a market based mechanism.

CBL commented that it was familiar with auctioning the provision of the USO and its funding to specific regions or islands and that this is perhaps the most common approach to the implementation of US around the world in relation to network expansion. CBL stressed that while there is a market component to the "auctioned" approach, it is important to stress that the financing of the project is the responsibility of the USP.

## **URCA's response to comments**

URCA's proposal on market based options was not intended for immediate implementation but an option for future consideration. The current consultation is intended to ensure the effective implementation of existing USOs imposed on BTC and CBL. URCA is not proposing any market based options at this time but will consider those options at the appropriate time. Notwithstanding URCA's position, URCA advises BTC that the success of tradable USO hinges on the optimal timing of the implementation of the USO given that the deployment of infrastructure and the USOs are essentially transient. It is URCA's view that where there are a limited number of USOs and designated USPs are permitted to trade the USO amongst themselves, the possibility exists for the fulfillment of a given USO and/or all USOs by one provider or no USO being fulfilled as providers engage in continuous trading of obligations. It is URCA's view that the first possibility is no different from what currently exists, while the second possibility is unacceptable to URCA. It is URCA's view that the tradable USO option is not feasible at this time in the Bahamian ECS market given the limited number of licensees.

URCA agrees with CBL that consideration for various funding approaches be considered earlier in the process, prior to the determination of funding from a USF. Where URCA has considered that an appropriate market based funding mechanism is superior to the USF, URCA would engage the designated USP on such a mechanism and URCA may consult with the industry prior to its implementation.



It is URCA's view that the current arrangement to impose a contribution requirement which conforms to the USF is a statutory pay or play mechanism where non-USP licensees are required to pay for the designated USPs to play. The concept of pay or play as conventionally applied allows greater flexibility than what is prescribed in the Comms Act (i.e., all licensees have the option to pay or play). The current arrangement does not envisage the sub-contracting of the USO to a third party or parties. Such an approach may introduce unnecessary administrative and legal complexities (e.g., *inter alia*, interconnection issues, calculation of the NAC, and enforcement and compliance).

URCA notes and accepts CBL's comments on the market component to the "auctioned" approach and the final responsibility of the USP in financing the USO. URCA further accepts CBL's comments on the use of auctioning globally for the provisioning of USO. URCA is also aware that auctions can be used as an entry strategy into the Bahamian ECS market. URCA is however concerned that where auctions are used for specific regions or islands, there exists the possibility of multiple providers serving dedicated areas. This has implications for interconnection, reduces economies of scale which inevitably impact retail rates inclusive of the uniformity of those rates, cream skimming, inability of providers to fulfill their USOs over time, foreclosures and consolidation. It is URCA's view that the current arrangement may be more applicable, at this time, to The Bahamas.

#### **URCA's final decision**

URCA will consider, going forward, various market-based funding options inclusive of pure market-based, a mix of funding (market and USF) or pure Fund based funding.

#### **4.42 Treatment of Confidential Information**

**Question No. 42:**

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

#### **BTC Comments**

BTC commented that URCA, when deciding whether to disclose information that USPs deems confidential, takes into account the cost/benefit of releasing such information.

#### **CBL Comments**

CBL agreed with URCA's proposal.

### **URCA’s response to comments**

URCA notes that the requirement to contribute to the USF necessitates transparency and non-discrimination in two key areas:

- the determination of the NAC; and
- the quantum of the TRR to be contributed by licensees operating in the ECS in The Bahamas to the USF.

In those two key areas, URCA may be required to publish the results of the calculations and associated methodology to ensure compliance with those principles. URCA therefore reserves the right to public information USPs may consider commercially sensitive where URCA believes publication is a matter of public significance.

### **URCA’s final decision**

USPs may be required to demonstrate that the disclosure of information specific to its USO can cause competitive harm as a condition for URCA to treat the information as confidential.

## **4.43 Establishment of a ‘Confidential Ring’**

### **Question No. 43:**

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

### **BTC’s Comments**

BTC stated that once information is deemed to be treated as confidential, URCA should be the only entity with access to this data.

### **CBL Comments**

CBL commented that if all or most of the costing information filed with URCA is kept confidential, then at a minimum a “confidentiality ring” should be created which should include representatives from each USF contributor and the information disclosed should be subject to Non-Disclosure Agreements (NDAs) signed by a limited group of individuals within each organization on a “need to know” basis.

### **URCA’s response to comments**

In response to BTC, URCA refers to URCA’s response in Section 4.42 above.

URCA is of the view that should the need arise to share confidential information with other licensees, a confidential ring would be established at a minimum and parties will be required to sign NDAs on a need-to-know basis.

**URCA's final decision**

If required, URCA will establish a confidential ring for the disclosure of relevant information and parties will be required to sign a NDA.

## 5. Next Steps

In going forward, URCA proposes to prepare and consult, where relevant, documents dealing with a number of outstanding aspects of its universal service framework:

- Guidelines for the calculation of the net-avoidable cost of the universal services;
- Determination on the establishment of the USF;
- Develop Operating Procedures of a Universal Service Compensation Fund;
- Quality of Service Indicators;
- Consumer Awareness of consumers' rights under the Universal Service Obligations in relation to the disconnection of universal services;

URCA as part of this proceeding is already assessing each USP's overall compliance with their existing obligations, including the extent to which any parts of the USOs remain unmet. In this regards, URCA will, in consultation with both BTC and CBL prepare relevant Implementation Plans for both USPs to fulfill their respective USOs.

URCA will also, in the future, indicate in its Annual Plan when URCA intends to commence the review of the existing USOs in contemplation of making determinations and designations under section 41 and 42 of the Comms Act.

## **Annex A: List of Consultation Questions and URCA’s Final Decisions**

For ease of reference, the following sets out a list of the Consultation Questions and URCA’s final decision on each Question as set out in this Statement of Results and Final Decision to the Consultation.

**Question No. 1:**

*Do respondents agree with URCA’s proposal to include “access” in the definition of Basic Telephony Services for universal service purposes?*

**URCA’s final decision**

The universal service obligation in relation to the provision of Basic Telephony services includes the provision of “access” at a fixed location. BTC is the designated USP under the Comms Act to provide Basic Telephony services.

**Question No. 2:**

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

**URCA’s final decision**

The technology neutral definition of Fixed Voice Telephony shall be:

*“a system of telecommunications in which telephonic equipment is employed in the transmission of speech or other sound between points, with or without the use of wires.”*

Basic telephony services under the USO refer to the installation, maintenance and servicing of a subscriber line to support voice telephony at a fixed location and voice telephony services over this line<sup>63</sup>. BTC has to make these services available upon request in all populated areas at (geographically) uniform and affordable prices. These services are remunerated with rental, installation fees and call rates.

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<sup>63</sup> The voice services include making and receiving both domestic and international calls.

**Question No. 3:**

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

**URCA's final decision**

Call management services and calling features are outside the scope of the USO for Basic Telephony Services.

**Question No. 4:**

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

**URCA's final decision**

URCA will issue appropriate Guidelines to the USPs for their assessment of affordability.

**Question No. 5:**

*Do respondents agree with URCA's proposal not to specify a bandwidth throughput for CBL's Internet Services USO?*

**URCA's final decision**

CBL is designated under the Comms Act to provide a USO internet service to all populated areas. CBL must provide that service at a nationally uniform and affordable tariff. CBL is now required to define the features of its USO internet service including its minimum bandwidth throughput.

**Question No. 6:**

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

**URCA's final decision**

URCA notes the internet service obligation entrusted on BTC under the Comms Act is dial-up. Should BTC cease to provide dial-up bandwidth in any populated area as a result of the

transformation of its network, BTC is still required to meet its USO internet obligation and must notify URCA and obtain URCA's prior approval to such change in the USO internet obligation, including specifying the designated speed for the fulfilment of its universal service internet obligation and satisfy URCA that all other relevant USO requirements are adhered to, namely uniform pricing and affordability.

**Question No. 7:**

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

**URCA's final decision**

BTC is designated under the Comms Act, with the universal service obligation to provide Public Pay Apparatus.

URCA will engage BTC during the development of BTC's USO implementation plan to design a set of USO rules for the determination of the number and the placement of Public Pay Apparatus which shall ensure unrestricted access to these pay apparatus by members of the public.

**Question No. 8:**

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

**URCA's final decision**

See URCA's final decision to Question 7 above.

**Question No. 9:**

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

**URCA's final decision**

Under the Comms Act, CBL is obligated to provide a new multichannel Basic Television Service comprising six channels. Two of these channels are ZNS and the Parliamentary Channel. CBL is to select the additional four channels under the condition that these four additional channels must be sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment.

CBL's Basic Television Service must be available to subscribers in all populated areas throughout The Bahamas at a uniform and affordable tariff. Therefore, CBL is required to make available its USO Basic Television package in all populated areas of The Bahamas, including those areas where it currently only offer its more wide-ranging SuperBasic service.

**Question No. 10:**

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

**URCA's final decision**

The pricing of the new USO Basic Television package should take into account all costs attributed to this service, including a share of common and fixed access costs. These costs are to be borne by all services making use of the access facilities.



**Question No. 11:**

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

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

**URCA's final decision**

There are six designated Specified Institutions that are defined as follows for the purpose of having access to a set of USO services free of charge:

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

CBL has to provide upon request to any of the foregoing Institutions one standard installation for Basic Television Service and the set-top box. An internet USP (i.e., BTC and CBL) has to provide upon request to these same institutions one access connection inclusive of the internet modem.

The internet services **only** are to be provided free of charge to the identified specified institutions.

**Question No. 12:**

*Do respondents agree with URCA's proposal that URCA establish a Specified Institutions Register and publish that Register quarterly on its Website?*

**URCA's final decision**

Both CBL and BTC are required under the Comms Act to provide USO internet services free of charge to Specified Institutions upon request. A Specified Institution is free to request USO Internet Services from both CBL and BTC free of charge.

Specified Institutions as defined in Question 11 above must register with URCA to be eligible to receive USO services. URCA will publish on its website an updated register of Specified Institutions on a quarterly basis.

**Question No. 13:**

*Do respondents agree with URCA's proposed working definition of Community Centers?*

**URCA's final decision**

A Community Center shall mean:

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

For the avoidance of doubt, “Community Centers” include organizations that represent or provide specialized services to the differently abled and shall include but is not limited to Bahamas Alliance for the Blind and Visually Impaired, Bahamas Association of the Physically Disabled, and Training Centre for the Disabled.

**Question No. 14:**

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

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

**URCA's final decision**

To qualify as Community Center under paragraph 2(e)(vi) of Schedule 5 of the Communications Act and be granted access to the USO services on the terms allowed to such Centers, organisations will be required to provide a set of information to URCA. This set of information will include: a signed declaration by the Community Center, stating that the Center is a non-profit organization and that there will be no charges imposed for the use of the acquired universal services. URCA will publish on its website a template application for Community Centers, which among other items will include confirmation of address (e.g., a utility bill).

**Question No. 15:**

*Do respondents agree with URCA's proposal that Community Centers demonstrate each year they meet the stipulated requirements to both URCA and the USP from which they are seeking universal services?*

**URCA's final decision**

- Community Centers must demonstrate each year to both URCA and the USP from which they are seeking universal services that they meet the stipulated requirements.

- The USP may conduct verification of the Community Centers to ascertain whether such Centers qualify for the designated universal services prior to providing the designated services.
- Should the USP conclude that a Community Center does not meet the requirements for the designated services, both the USP and the Center are required to put forward their respective cases to URCA for URCA’s final determination.

**Question No. 16:**

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

**URCA’s final decision**

Universal Telephony Services shall be accessible to any differently-abled user anywhere in The Bahamas.

**Question No. 17:**

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

**URCA’s final decision**

Specialized equipment for the differently abled are outside the scope of the existing USO for Basic Telephony Services.

**Question No. 18:**

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

**URCA’s final decision**

URCA has reconsidered this question. To the extent differently-abled citizens do not receive dedicated services from telephony and cable television providers that are within the scope of USO services, such register is not warranted at this stage. URCA does not propose therefore to introduce a register of differently-abled members of the society.

**Question No. 19:**

*Do respondents agree with URCA’s proposal to adopt 225 yards as the maximum distance between dwellings for the purposes of populated areas?*

**URCA’s final decision**

The maximum distance between dwellings for the purposes of populated areas shall be 225 yards, whether the USP is provisioning service from one dwelling to another or the distance of the dwelling from the available network.

**Question No. 20:**

*Do respondents agree with URCA’s proposal that “inhabited dwelling” should mean dwelling that are:*

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

**URCA’s final decision**

A populated area is made up of ten or more “inhabited dwellings”, that is to say, a group of households satisfying the following description:

- A populated area is made up of permanent dwellings; this means that the dwelling or premise must be of a non-transient nature (i.e., permanent, immovable), thereby excluding chattel-houses and temporary or transportable structures (e.g., trailers, caravans, mobile homes);
- The structure must be dwelling or house (e.g., single detached, single attached, part of a private home, apartment buildings/flats/condominiums/town houses, other permanent dwellings), thereby excluding hotels, vacation resorts, businesses and other commercial premises;
- The dwellings must be inhabited (i.e., by households consisting of one or more persons), thereby excluding vacant, partially constructed or abandoned structures;
- A populated area is made up of at least 10 households living in at least 10 dwellings (e.g., single detached premises, single attached premises, part of a private home, apartment buildings/flats/condominiums/town houses, other permanent dwellings).

**Question No. 21:**

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

**URCA's final decision**

In principle, the appropriate unit of assessment of net avoidable cost of the USO related to telephony, pay television and internet shall be that of the individual islands. However, URCA will give further consideration to this issue in developing guidelines on the methodology for the NAC calculation.

**Question No. 22:**

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

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

**URCA's final decision**

The relevant costs that the Universal Service Provider should use in its calculation of its Universal Service Obligation should be:

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

URCA will prepare further details through its forthcoming guidelines on the various components to be included in the net-avoidable cost calculation.

**Question No. 23:**

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

**URCA's final decision**

The direct/indirect revenues that are to be included in the NAC of basic telephony provision are:

### Direct

- The one-off-connection (installation) charge incurred in the relevant financial year under review for a USO funding application;
- Monthly access (line rental);
- Reconnection charges (where applicable);
- Call revenues inclusive of local, domestic long distance, international, directory enquiries and premium rate services derived from direct or indirect (pre-paid calling cards) dialling;
- Internet services inclusive of dial-up and broadband; and
- Value added services (call management services - voice mails, call forwarding, etc.)

### Indirect

- Net Revenues from incoming domestic calls;
- Net Revenues from inbound international calls to “USO” customers;
- Where relevant receiving party pays revenues;
- Wholesale interconnection revenues which incorporate fixed termination and transit services as a result of calls originating from residential customers of non-USP networks ;
- Leased lines (retail and wholesale) revenues,;

Within its forthcoming guidelines URCA will identify the equivalent direct and indirect revenues in relation to the USO provision of payphones and cable television.

#### **Question No. 24:**

*Do respondents agree with URCA’s proposal to make an efficiency adjustment based on any annual productivity gains the USPs achieve?*

### **URCA’s final decision**

URCA may make an efficiency adjustment based on any annual productivity gains the USPs achieve to the net cost of the USO based on actual costs data. URCA would therefore consider carefully the circumstances of each case to ascertain whether such efficiency adjustment to a calculated net cost of the USO would be necessary.

USPs will be required to compute their respective NAC, with the adjustment made for efficiency in accordance with guidelines on NAC methodology.

**Question No. 25:**

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

**URCA's final decision**

In principle, an adjustment for the intangible benefits to the calculation of the net cost of the USO is necessary. Four intangible benefits are to be considered looking forward:

- Enhanced Brand Recognition/Corporate Reputation
- Ubiquity.
- Life Cycle Effect.
- Marketing.

**Question No. 26:**

*What method or combination of methods for calculating each of the specific benefits detailed in Section 4.1.4 of the Public Consultation document do respondents consider to be the most appropriate?*

**URCA's final decision**

The most appropriate method or combination of methods for calculating intangible benefits in the derivation of the NAC are:

- Enhanced Brand Recognition/Corporate Reputation – estimated at 10% of the USP's retail advertising and sales expenditures.
- Ubiquity – estimated as the per-line net contribution to profit of customers or households who migrate from high cost to low cost areas.
- Life Cycle Effect – estimated by the net value of the number of households that switch from being unprofitable to profitable as income grows and the difference between the cost of customer acquisition and customer retention as barriers to switching are removed.
- Marketing – estimated from, where applicable, commercialization of customer usage data

These approaches will be further considered and fleshed out in the guidelines on how to calculate the net cost of the USO.



**Question No. 27:**

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

**URCA's final decision**

URCA will use a two stage approach to the possible determination of an unfair financial burden. The first stage relates to the market share threshold at which URCA will commit to undertake an analysis of whether an unfair financial burden exists. The second stage is the analysis itself and the approach discussed in Section 4.29 below.

The threshold for the determination of an unfair burden will be set at 80%. Where the USP's market share is 80% and greater, the presumption is that no unfair burden exists. The USP would have to demonstrate that it faces an unfair burden whilst having a market share greater than 80%.

Where the USP's market share is less than 80%, URCA will assess whether an unfair burden exists.

**Question No. 28:**

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

**URCA's final decision**

In instances where the regulatory costs of administering the USF are disproportionate to the net transfer to the USP, the USP will bear the net USO cost. URCA will disclose to the USP and the communications sector its assessment of the cost of administering/establishing the USF against the net transfer to the USP.

**Question No. 29:**

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

**URCA's final decision**

Where the regulatory cost of administering the USP are not disproportionate to the administrative cost of establishing the USF, URCA will examine whether or not the USP is able to achieve a fair rate of return on capital employed (ROCE) and the extent to which the USPs can rely on revenues from non-USO services to support the provision of the USO services.

**Question No. 30:**

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

**URCA's final decision**

The assessment of competitive distortion will have regards to the following criteria,

- changes in prices over time;
- changes in market share and/or changes in related markets; and
- market entry barriers.

**Question No. 31:**

*Do respondents agree with URCA's proposal to establish separate USFs for each designated USP?*

**URCA's final decision**

URCA will establish one USF. However, for purposes of transparency and accountability, URCA will establish separate accounts under one Fund into which monies will be deposited from USPs operating in separate markets. The full design of this Fund will be determined at a later date.

**Question No. 32:**

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

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

**URCA's final decision**

For the purposes of the USF, URCA will appropriate a percentage contribution from licensees that equates to a licensee's contribution to the total industry Total Relevant Revenues for the purposes of recovery of the net avoidable cost to the funding of universal services. Total Relevant Revenues (TRR) for the calculation of contribution would exclude:

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

Revenues derived from inbound roamers, incoming domestic calls to the USP's network, wholesale and retail revenues derived from leased lines (wholesale and retail), and interconnection revenues are to be included in the TRR.

**Question No. 33:**

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

**URCA's final decision**

The minimum threshold below which a licensee whose Total Relevant Revenues is less than B\$50,000 will be exempt from contributing to the universal service fund. URCA proposes to review this minimum threshold every three (3) years to ensure consistency with the development of competition in the pay television, telephony and internet markets.

**Question No. 34:**

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

### **URCA's final decision**

URCA will open separate accounts for universal service and will annually have those accounts audited and publish audited statements.

#### **Question No. 35:**

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

### **URCA's final decision**

The administrative and management cycle of the USF will follow the calendar year and any request for funding must be submitted to URCA on an annual basis, within one month of the publication of relevant audited separated accounts but no later than eleven months following the end of the USP's financial period.

#### **Question No. 36:**

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

### **URCA's final decision**

In the formative years of the USO, URCA will not automatically cancel the process of considering an application for funding for the net cost of the USO.

#### **Question No. 37:**

*Do respondents agree with URCA's proposal that:*

- *Contributor licensees be required to submit to URCA financial statement of the Total Relevant Revenues within four (4) months after the end of their financial year;*
- *URCA issue on or before 30 days of receiving those financial statements, invoices to contributor licensees specifying the quantum of their contribution to the relevant Funds; and;*
- *Contributor licensees be required to make the necessary payment before the expiration of 30 days to the relevant USFs Accounts?*

### **URCA's final decision**

URCA will finalize in the guidelines the time period for the contributing licensees Total Relevant Revenues financial statement.

URCA has amended the invoicing process to provide greater clarity, as follows:

- Within 30 days of determining the existence of an NAC, URCA will issue invoices to contributors specifying the quantum of their contribution to the Fund; and;
- Contributors are required to make payment to URCA before the expiration of 30 business days from the invoice date.

**Question No. 38:**

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

**URCA's final decision**

The failure by a Contributor licensee to pay the required contribution on the due date will incur an annual interest rate of 3% above the prime lending rate, as notified by the Central Bank of The Bahamas, on all outstanding monies, until the full contribution is paid to the USF account.

**Question No. 39:**

*Do respondents agree with URCA's proposal that the administrative and management costs be recouped through the contribution to the USF?*

**URCA's final decision**

The administrative and management costs of the USF will be recouped through the contribution to the USF.

**Question No. 40:**

*Do respondents agree with URCA's proposed working definition of Market-Based?*

**URCA's final decision**

Market-based funding shall have the following meaning:

“mechanisms whereby both the provision of the USO and the financing of the net cost of the USO are met by rules setting out how all service providers and users can operate in the electronic communications market.”

**Question No. 41:**

*Do respondents agree that URCA's proposal to consider various funding options inclusive of pure market-based, a mix of funding (market and USF) or pure Fund based funding?*

**URCA's final decision**

URCA will consider, going forward, various market-based funding options inclusive of pure market-based, a mix of funding (market and USF) or pure Fund based funding.

**Question No. 42:**

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

**URCA's final decision**

If required, URCA will establish a confidential ring for the disclosure of relevant information and parties will be required to sign a Non-Disclosure Agreement.