



CABLE BAHAMAS LIMITED
APPLICATION FOR PERMANENT PRICE
CHANGE FOR SUPERBASIC CABLE TELEVISION
SERVICES

STATEMENT OF RESULTS AND FINAL
DECISION

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CABLE BAHAMAS LIMITED: APPLICATION FOR PERMANENT PRICE
CHANGE FOR SUPERBASIC CABLE TELEVISION SERVICES

I, Kathleen Riviere-Smith, the Chief Executive Officer of the Utilities Regulation and Competition Authority (the Authority), hereby confirm that in conformity with the provisions of section 8(1) of the Communications Act when read in conjunction with section 12(1) of the Communications Act, the Authority issues and publishes the attached regulatory measure made and approved by the Authority.

A handwritten signature in blue ink, reading 'Kathleen Riviere-Smith', is positioned above the printed name.

KATHLEEN RIVIERE-SMITH
Chief Executive Officer

Table of Contents

1.	Introduction	1
1.1	<i>The Application</i>	1
1.2	<i>The Consultation Process</i>	1
1.3	<i>Structure of the remainder of this document</i>	3
2	Regulatory Framework Applicable to SuperBasic services	4
2.1	<i>CBL's Ex-Ante Obligations</i>	4
2.2	<i>Relevant Regulatory Provisions</i>	5
3	Summary of URCA's Analysis	10
4	URCA's Responses to General Comments by the Public	12
4.1	<i>CBL's non-participation in town-hall meetings</i>	12
4.2	<i>URCA's regulatory mandate and procedures</i>	12
4.3	<i>Conflict of Interest</i>	15
4.4	<i>CBL's share buyback</i>	16
4.5	<i>Digitization of CBL's cable network</i>	16
4.6	<i>Tying of Cable TV and Broadband</i>	17
4.7	<i>Pricing for service bundles</i>	18
4.8	<i>Lack of access to CBL's Digital backbone</i>	18
4.9	<i>Payment for overseas content</i>	19
4.10	<i>Comments unrelated to SuperBasic</i>	19
5	Specific Comments by the Public	21
5.1	<i>The SuperBasic service was overpriced when introduced</i>	22
5.2	<i>CBL's profitability levels</i>	23
5.3	<i>Other price increases and charges</i>	23
5.4	<i>CBL derives revenues from other services</i>	30
5.5	<i>Charges associated with payment of subscription fee</i>	30
5.6	<i>The pay TV market is not competitive</i>	31
5.7	<i>Price increase is to fund CBL's other businesses</i>	33
5.8.	<i>CBL's benchmarking</i>	33
5.9	<i>Price increases and approvals elsewhere</i>	34

5.10	<i>Timing of CBL's application</i>	34
5.11	<i>Application raises affordability concerns for the public</i>	35
5.12	<i>CBL has not met its obligations</i>	36
5.13	<i>New Basic TV Package</i>	38
5.14	<i>Other specific Comments</i>	39
5.15	<i>Quality of Service Issues</i>	40
	i. Comments on poor service coverage	40
	ii. Comments on service outages	41
	iii. Comments on programming	42
	iv. Comments on complaints handling	43
	v. Comments on service quality metric and commitment	44
	vi. Comments on "hidden" fees and related matters	44
	vii. Comments on unsanctioned use of customer account	47
6.	Responses by CBL to Consultation	48
6.1	<i>Regulatory Framework for SuperBasic Services</i>	48
6.2	<i>Application's Compliance with Pricing Rules</i>	49
	i. Competitive Alternatives to SuperBasic	50
	ii. CBL's Benchmarking sample	51
	iii. Objectives of the Comms Act	52
6.3	<i>Affordability Requirement</i>	53
	i. Applicability of affordability principle to SuperBasic	53
	ii. Affordability is not defined in the Comms Act	53
	iii. URCA adopted a limited/targeted approach to affordability	55
	iv. URCA's examples of definitions on affordability are limited	56
	v. Emphasis on promoting affordability in URCA's review	57
	vi. Pay television subscribership in Bahamas	62
7	Final Decision	64
	<i>Annex 1 –</i>	<i>67</i>
	<i>Public Relations Support Schedule</i>	
	<i>Annex 2 – Summary of Comments at Public Meetings</i>	<i>69</i>

1. Introduction

The Utilities Regulation and Competition Authority (URCA) is issuing this Statement of Results and Final Decision following URCA's review of Cable Bahamas Ltd.'s (CBL) pricing application (dated 1 December 2011) for a permanent price increase for SuperBasic cable television services.

1.1 The Application

CBL requested a 27% increase in the monthly subscription charge for SuperBasic, which translates into a per month price increase of \$8 for the residential package (marketed as "RevTV Prime") and \$13.50 for the commercial package (marketed as "RevTV Business Prime"). The current monthly rates of \$30 and \$50 respectively have remained unchanged since they were first introduced in 1994.

The SuperBasic service falls within the economic market for pay television services in which CBL has Significant Market Power (SMP) or dominance.¹ Within its application, CBL described SuperBasic as a terrestrial cable television service, which is distinct from television services transmitted via satellite, and traditional broadcasts (i.e., over-the-air). SuperBasic is the core pay television service customers must purchase prior to subscribing to CBL's other pay television offerings such as pay-per-view, high definition channels and digital television services. Within its application, CBL stated that the vast majority of SuperBasic subscribers in The Bahamas receive 54 channels as part of their monthly subscription, but noted that "in isolated, less populated islands where signal delivery is served via satellite subscribers may receive 48 channels."

This Statement of Results and Final Decision document follows URCA's review of all responses to the consultation document (ECS 23/2012) on CBL's SuperBasic pricing proposition.

1.2 The Consultation Process

URCA's public consultation on CBL's price application was launched on 4 September 2012 at a press conference held at URCA's offices on East Bay Street (UBS Annex Building) where URCA:

¹ Section 39(1) of the Comms Act.

- provided information on CBL's application;
- outlined arguments put forward by CBL in respect of the proposed rate;
- highlighted the objectives of URCA's consultation on CBL's application;
- discussed URCA's role in respect of the application; and
- stressed the importance of public inputs and participation in the consultation.

To ensure the widest possible public participation in the process, URCA conducted a number of public engagements² aimed at promoting awareness and soliciting feedback and inputs from consumers and other licensees on the application. These included town-hall meetings in New Providence, Grand Bahama, Long Island, and Abaco. These town-hall meetings were also supplemented with media appearances by members of URCA's executive management.

The consultation paper sought respondents' views on the likely residential and commercial consumer groups that may be affected if the new price level is approved. URCA also invited stakeholders to put forward proposals on how this impact may be mitigated. URCA stated that where possible, stakeholders should quantify the impact of any proposals they make, particularly in the following areas:³

- The likely residential and commercial consumer groups that may be most affected if the price increase applied for by CBL is approved. Where possible, stakeholders should seek to quantify any views they put forward.
- Comments on CBL's proposal and URCA's analysis and proposed intent on the application.
- Comments on where a stakeholder believes that any of the positions set forth by URCA in the consultation document are contrary to relevant regulatory objectives, principles and/or obligations applicable to CBL. In any such comments, a respondent should set out clearly its reasoning for such objections, together with evidential information to substantiate its position.

At the close of the consultation (on 19 October 2012), in addition to the comments received in public meetings, URCA received written responses from:

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

² A Schedule of public events on CBL's Application is at Annex 1

³ Section 5 of ECS 23/2012.

- members of the Bahamian public.

URCA expresses its appreciation and thanks to all participants for their involvement in this very important exercise on CBL's SuperBasic pricing proposition. Their participation was most helpful in informing this Statement of Results and Final Decision. The text of each response can be found at www.urcabahamas.bs in the Publications Section of URCA's website.

This document concludes URCA's public consultative proceeding on CBL's retail charging proposition in relation to SuperBasic services. Persons may obtain copies of this document by downloading it from the URCA website at www.urcabahamas.bs.

URCA expressly states that failure to respond to any issue raised does not necessarily signify agreement in whole or in part with the comment, that it has not considered the comment or that it considers the comment unimportant or without merit.

1.3 Structure of the remainder of this document

The remainder of this document is structured as follows:

- Section 2: Regulatory framework applicable to SuperBasic services.
- Section 3: Summary of URCA's analysis.
- Section 4: Responses to General Comments by the Public.
- Section 5: Specific Comments by the Public.
- Section 6: Responses by CBL
- Section 7: Final decision.

2 Regulatory Framework Applicable to SuperBasic services

In reviewing CBL's SuperBasic pricing proposition, URCA must give consideration to:

- The finding that CBL has SMP in pay television services as set out in section 116 of the Comms Act, and the consequent ex-ante regulatory measures applicable to CBL (including the Pricing Rules for SMP operators), as set out in ECS 10/2010; and,
- The relevant provisions of the Comms Act, and the Electronic Communications Sector (ECS) Policy.

These factors are described in further detail in Sections 2.1 and 2.2 below.

2.1 CBL's Ex-Ante Obligations

Pursuant to section 116(1) of the Comms Act, CBL is presumed as having Significant Market Power (SMP) in pay TV services, and high-speed data services and connectivity.⁴ In accordance with section 116(2) of the Comms Act, on 22 April 2010 URCA published its Final Decision on Obligations Imposed on Operators with Significant Market Power (SMP) (ECS10/2010)⁵ in which URCA confirmed that CBL had SMP in:

- SuperBasic television services for residential and commercial customers;
- Digital television packages (including High Definition Television (HDTV), and Pay Per View);
- Retail national leased lines;
- Broadband internet access;
- Wholesale national leased lines; and
- Access to the broadband network and services and Access to the transmission network.

⁴ Under section 39(1) of the Comms Act "a licensee is an SMP licensee if the licensee, individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers."

⁵ See Section 4 (p. 30) "Obligations Imposed on Operators with Significant Market Power (SMP) – Final Decision", 22 April 2010 (ECS 11/2010) at www.urcabahamas.bs.

In URCA's Final Decision on SMP Obligations, URCA also determined that CBL's SuperBasic television service would be price regulated. This means that:

- CBL must first obtain URCA's written approval before introducing any price changes, either of a permanent or temporary nature, to its SuperBasic television service. Such an application must be made in accordance with the Retail Pricing Rules defined by URCA which include a requirement for CBL to demonstrate, inter alia, the commercial rationale for the price change; and that the proposed price increase is not anti-competitive.⁶
- Any bundle, tied product or package that includes SuperBasic cable television (i.e., a "Price Regulated Bundle") is also subject to price regulation.
- URCA's written approval is also required before CBL can withdraw or discontinue its SuperBasic television service.

Other regulatory measures/obligations imposed on CBL are to:

- prepare separated financial accounts on an annual basis for SuperBasic television packages, digital television packages, leased lines, and broadband internet packages; and
- untie pay television and broadband packages for all existing and new customers.

The package of regulatory measures imposed on CBL are intended to ensure fair, efficient and sustainable competition between operators, and to safeguard the public interest, thereby furthering the objectives specified in section 4 of the Comms Act.

As stated above, CBL has applied to URCA to increase the price of its SuperBasic television service, thereby triggering URCA's review processes governing applications for permanent price increases.

2.2 Relevant Regulatory Provisions

The Price Regulation Rules do not contain full criteria which URCA should consider in deciding whether or not to approve or reject an application under those rules, and therefore URCA looks to its general guidelines on regulatory decision making to determine this application.

Section 5 of the Comms Act provides the overarching guidelines for URCA's regulation of the Electronic Communications Sector. It requires that:

⁶"Regulation of Retail Prices For SMP Operators – Rules", ECS 15/2010, 22 April 2010.

“All policy measures, decisions and laws to take effect in the electronic communications sector shall be made with a view to implementing the electronic communications policy objectives and shall comply with the following guidelines –

(a) market forces shall be relied upon as much as possible as the means of achieving the electronic communications policy objectives;

(b) regulatory and other measures shall be introduced –

i. where in the view of URCA market forces are unlikely to achieve the electronic communications policy objective within a reasonable time frame, and

ii. having due regard to the costs and implications of those regulatory and other measures on affected parties;

(c) regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory; and ...”

The Electronic Communications Policy Objectives are set out in section 4 of the Comms Act, and provide, inter alia, that:

“...electronic communications provide an essential role in promoting the economic and social welfare of The Bahamas and that, ... the electronic communications policy has as its main objectives –

(a) to further the interests of consumers by promoting competition and in particular –

(i) to enhance the efficiency of the Bahamian electronic communications sector and the productivity of the Bahamian economy;

(ii) to promote investment and innovation in electronic communications networks and services;

(iii) to encourage, promote and enforce sustainable competition ...

(b) to further the interests of persons in The Bahamas in relation to the electronic communications sector by –

(i) promoting affordable access to high quality networks and carriage services in all regions of The Bahamas; ...

(v) promoting availability of a wide range of content services which are of high quality.”

The objectives are geared toward promoting the interests of persons in The Bahamas both as consumers of electronic communications services, and generally. The objectives acknowledge that effective competition has the effect of promoting the interests of consumers through lower prices and better services, and encourage URCA to implement regulatory measures and

make decisions which promote competition. URCA is also exhorted to seek the interests of the wider public in The Bahamas by, inter alia, promoting affordable access to high quality networks and carriage services in all regions of The Bahamas, and promoting the availability of a wide range of high quality content services.

Also of relevance is section 40 of the Comms Act, which treats with the nature and purpose of the obligations that have been placed on operators that have SMP. This section of the Act underpins CBL's SMP obligations, inclusive of the Retail Pricing Rules under which the application for a permanent price increase has been made. Relevant parts of section 40 provide:

“(1) ... URCA may impose specific conditions on licensees determined to have SMP in the relevant market or relevant markets, including obligations relating to –

(a) cost recovery and price controls, including obligations for cost orientation or prices and obligations concerning cost accounting systems; ...

(b)

(c) the submission of regulatory accounts or financial statements separating out the key business activities of the licensee;

(d) retail price regulations ...

(3) Prior to imposing any obligations under subsection 40(1) UCRA –

(a) shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits;

(b) shall take into account the investment made by the relevant licensee and allow the licensee a reasonable rate of return on capital employed, taking into account the risks involved;

(c) shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a determination of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs; and

(d) may also take account of prices in comparable markets.”

Accordingly, under section 40 of the Comms Act, which governs SMP licensees, URCA shall ensure that any “cost recovery mechanism or pricing methodology that is mandated promotes

efficiency and sustainable competition and maximises consumer benefits”⁷ and URCA may also “take account of prices in comparable markets”.⁸ In making its decision under the Retail Pricing Rules URCA is also guided by these principles.

Section 119(1)(e), and Schedule 5, paragraphs (1)(b)(i) and (iii) of the Comms Act impose an obligation on CBL to provide “affordable basic television services to all populated areas and specified institutions.”⁹ For the purposes of the Act, “basic television services” is defined as “the provision of a multichannel television service comprising six channels, including ZNS Channel 13, and the Parliamentary channel.”

The universal service obligation (USO) described above is a key element of the ECS Policy.¹⁰ In particular, paragraph 54 of the ECS Policy states 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.”¹¹

URCA has highlighted this obligation throughout the consultation on CBL’s price increase application as the obligation remains unsatisfied by CBL in respect of the provision of affordable Basic Television Services throughout The Bahamas, and is a key enabling mechanism for the objectives set out in section 4(b)(i) of the Comms Act. URCA has noted throughout the consultation that in the context of a failure by CBL to provide, to the majority of persons in The Bahamas, the required Basic Television Service, an increase by CBL in the price of its SuperBasic television service will directly affect the extent to which persons in The Bahamas can be said to have “affordable access to high quality networks and carriage services in all regions of The Bahamas”, and an available “wide range of content services which are of high quality”.

Based on the foregoing, the issues which URCA has considered in assessing CBL’s application for a price increase, can be summarised as follows:

⁷ Section 40(3)(a)

⁸ Section 40(3)(d)

⁹ “Specified institutions” mean – all public and church operated schools; Public libraries; Public hospitals and public medical clinics; Institutions registered with URCA (namely, Senior citizens homes, Orphanages, Community centers); the College of The Bahamas; Bahamas Technical and Vocational Institute; Bahamas Hotel Training College; and Eugene Dupuch Law School. “Populated areas” mean - groups of permanent inhabited dwellings comprising ten or more households.

¹⁰ Section 5 of the Comms Act requires that “all policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic communications policy objectives”.

¹¹ Paragraph 54 of the ECS Policy dated 6th October, 2009.

- URCA must assess the extent to which the price increase will promote and encourage fair, efficient and sustainable competition between operators, having regard to:
 - the extent to which the proposed new price affords CBL the opportunity to earn a reasonable return on its investment;
 - the extent to which competition might be adversely affected if CBL did not increase its price; and,
 - the impact on CBL's business of a decision by URCA to approve or not to approve the application.

URCA must also ensure that its decision has the overall effect of furthering the interests of consumers and the public in The Bahamas in terms of, *inter alia*, the affordable access to high quality networks and carriage services in all regions of The Bahamas, and the availability of a wide range of content services that are of high quality.

It is incumbent on URCA when considering CBL's application that URCA adopt a balanced approach by giving equal consideration to the interest of all stakeholders, including customers who would be impacted by the requested increase. URCA needs to balance allowing CBL to recover the underlying cost of providing the SuperBasic package in an efficient way, against those of ensuring that access to the relevant service is affordable. Prices based on efficient costs would be most consistent with encouraging competition as they would provide the correct incentives to CBL to remain in the market and therefore allow sustainable competition. However, such prices may rise above the level of affordability, so that in the absence of a cheaper alternative, the price increase would undermine the objective set out in section 4(b)(i) of the Comms Act.

As part of its assessment of the price application, URCA has considered information provided by CBL itself, information provided as part of the public consultation and information on international best practice.

3 Summary of URCA's Analysis

Having reviewed all the responses to the consultation, URCA has not been provided with a basis on which to revise, amend or modify its preliminary findings outlined in Section 5 of the consultation paper. As such, URCA affirms that:

- The application is complete relative to the minimum information requirements specified in the Retail Pricing Rules.
- The level of the price increases requested by CBL is designed to align the overall revenue from SuperBasic with the underlying fully allocated costs incurred by CBL in provisioning the service.
- The underlying costing information provided by CBL appears to be in line with CBL's accounting separation methodologies and principles.
- The proposed price increase appears reasonable relative to CBL's specific financial information and supporting information from other relevant markets.
- The proposed price increase appears to raise affordability concerns for low income households, however, it is unlikely to raise affordability concerns for medium to high income households.
- The proposed price levels for residential and commercial SuperBasic packages are unlikely to raise anti-competitive concerns in the marketplace.

URCA's major concern continues to be that, in the absence of compliance by CBL with the universal service obligations in the Comms Act to provide affordable Basic Television Services to all populated areas and specified institutions in The Bahamas, there is no lower-priced, less inclusive package available to those existing or potential customers who are unable or unlikely to afford a 27% (\$8) proposed price increase in the residential SuperBasic services or are deterred from subscribing to the service because of the proposed price increase/price level.

In addition, there was general concern raised by respondents pertaining to the poor quality of service and customer care provided by CBL. URCA considers that the objective of ensuring affordable access to *"high quality networks and carriage services in all regions of The Bahamas"* and promoting *"availability of a wide range of content services which are of high quality"* as set out in section 4(b)(i) and (vi) of the Comms Act, combined with its mandates set out in Part VIII of the Act, establish a clear responsibility for URCA to address the quality of service and customer care issues raised by respondents. However, URCA considers that these issues are

wide ranging and while there must necessarily be a link between quality of service and price of services, the matter is most appropriately addressed in regulatory measures dedicated to the issues of Consumer Protection and Quality of Service. URCA has scheduled these issues to be addressed during 2013, and will seek to ensure that consumers of electronic communications services obtain value for money.

4 URCA's Responses to General Comments by the Public

In this Section, URCA summarises and responds to the general comments raised by the respondents at town-hall meetings and other public forums as well as the written submissions received from members of the public.

In their written and verbal comments, respondents highlighted and expressed comments on issues and concerns of a general nature. Amongst others, these included comments on URCA's regulatory remit in respect of CBL's application and URCA's role as ECS regulator generally; potential conflict of interest; CBL's share buyback in 2010; digitization of CBL's network and services and the requirement that CBL's subscribers must either rent or buy set-top boxes (STBs) to receive digital signals; and service quality concerns relating to non-SuperBasic services offered by CBL and services offered by BTC. URCA encourages the public to continue to make its views known on all issues facing URCA as it exercises its mandate to promote the overall objectives of the Comms Act.

4.1 CBL's non-participation in town-hall meetings

The respondents commented that CBL should have been present at town-hall meetings to understand its customers and their issues and to explain CBL's rate application to customers and interested third parties.

URCA's response to comments received

URCA acknowledges respondents' comments on the merits of CBL participating in town-hall meetings and other public engagements in connection with CBL's price application. URCA afforded CBL the opportunity to actively participate in the various town-hall meetings to explain the rationale for its application to the public and respond to comments and/or inquiries from customers. CBL, however, declined URCA's invitation. Nevertheless, the town-hall meetings formed a significant part of URCA's mandate to publicly consult on CBL's price application and CBL was not under any statutory or other obligation to participate in the meetings which were solely URCA's responsibility.

4.2 URCA's regulatory mandate and procedures

URCA's role in respect of CBL's rate application attracted wide ranging comments during the consultation, with members of the public commenting that URCA:

- Conduct an opinion poll to determine whether majority public support existed for the proposed price increase.
- Deny the application on the grounds of “protecting the Bahamian consumer ...”and that “...at least 90% of the Bahamian public are AGAINST this hefty increase.”
- Has a responsibility to protect members of the public “... *from unscrupulous business practices*” and champion the cause of the underprivileged.
- Has already made its decision to approve the application and the consultation is merely an exercise in futility or a farce.

One respondent enquired as to:

- URCA’s mission and whether URCA has failed its mission; and
- whether URCA would take the lead role in a class action lawsuit to recover excessive fees from licensees.

URCA’s response to comments received

URCA acknowledges the proposals by the general public on how URCA should proceed in its review of CBL’s application. URCA considers that the proposals and related comments underscore the need for URCA to clarify and explain its specific role in respect of CBL’s application and more generally its role as regulator of the electronic communications market. In so doing, URCA anticipates that public understanding and awareness of URCA’s powers and duties and the principles underpinning URCA’s decision making process would be greatly enhanced.

URCA is a body corporate established under the Utilities Regulation and Competition Authority Act 2009 (the URCA Act), and is authorised to regulate entry and competition in the electronic communications industry pursuant to the Comms Act. URCA’s remit is wide ranging and includes the licensing and regulation of converged networks and services, in particular internet services, fixed and mobile telephony, radio and over-the-air television broadcasting, pay television services (including cable television services) and the management of state assets (i.e., numbering and radio frequency spectrum). One of URCA’s core functions is to ensure that regulation of licensees with market power promotes the overall objectives of the ECS Policy as established in section 4 of the Comms Act.

URCA advises that although it has a statutory mandate under section 4 of the Comms Act to promote the interest of persons in The Bahamas in relation to electronic communications

services, URCA is not a consumer advocacy body. URCA notes that the objectives established in the Comms Act require URCA to seek a balance between the competing interests of the licensees URCA regulates and consumers who utilise electronic communications services. It is also a requirement of the Comms Act that URCA discharges its responsibilities in a transparent and non-discriminatory manner, and at all times adheres to the principles of natural justice. In furtherance of the foregoing principles, URCA must at all times act in a fair and balanced manner in relation to all matters brought before it and make impartial decisions based on the evidence presented, the URCA Act, the Comms Act and the ECS Policy. As such, URCA must act independently of any individual or group including the licensees it regulate and customers or consumers.

URCA's decision-making procedures and processes are enshrined in the URCA Act, the Comms Act and specific regulatory measures issued by URCA. This means that in respect of CBL's rate application, URCA must also be guided by URCA reference document ECS 15/2010 "*Regulation of Retail Prices for SMP Operators – Rules*" issued 22 April 2010.

URCA also advises that it is not required to make decisions based on majority public opinion surveys or polls, nor would it be appropriate under its governing legislation for it to do so. URCA's decisions must be based on the governing legislation, the Sector Policy, regulatory measures issued by it, the merits of the arguments and data presented, and best practice considerations.

URCA acknowledges the respondents' comments in this area. URCA reassures the public that the consultation is an effort on URCA's part to solicit the widest possible public feedback and inputs on CBL's SuperBasic price increase application. In particular, URCA notes that under the Comms Act, URCA has a statutory obligation to afford members of the public a reasonable opportunity to comment on matters of public significance before issuing a final decision. URCA, having reviewed CBL's application, was satisfied that under the terms of section 11(1) and section 13(1) of the Comms Act, CBL's request has wide public interest and warranted a public consultation before URCA makes its final decision.

Concerning the respondents' comments on URCA's mission, URCA draws attention to URCA's Three Year Strategy and Annual Plan for 2011 (ECS26/2011)¹² where URCA's mission in relation to ECS in The Bahamas is stated:

¹² Available at www.urbahamas.bs.

“We [i.e, URCA] are committed to achieving sustainable competition and promoting consumer interests, through effective and efficient regulation of utilities and broadcasting.”

URCA remains committed to its stated mission in relation to ECS in The Bahamas and assures stakeholders that URCA remains vigilant in fostering a level playing field for competition to flourish and optimizing customer benefits from sector reform.

URCA notes the inquiry as to whether URCA could take the lead role in a class action lawsuit to recover excessive fees from licensees. Based on the foregoing comments, URCA reiterates that such action would be fundamentally inconsistent with URCA’s role as an independent regulator, and therefore contrary to its mandate as set out in the Comms Act.

4.3 Conflict of Interest

Respondents questioned the business relationship of URCA’s chairperson with CBL, expressing the concern that there appears to be a “conflict of interest” with URCA’s current chairperson regulating one of his law firm’s clients. Given this concern, the respondents stressed that URCA’s integrity is compromised and questioned whether URCA can be independent and objective in its analysis of CBL's application.

URCA’s response to comments received

URCA notes the comments on the perceived conflict of interest, including the recognition that URCA must be independent and objective in its review of CBL's price application.

URCA, as an independent authority, is committed to the highest standards of professional integrity, transparency and openness in all matters relating to the electronic communications industry. URCA is mindful of its statutory responsibility to act in a fair and impartial manner and to ensure that undue influences are not brought to bear on its decisions by any individual or group.

URCA had previously addressed the apparent conflict of interest concern raised by the respondents and issued (September 13, 2012) a separate public statement on the matter.¹³ URCA is also satisfied that, in accordance with section 25 of the URCA Act, appropriate and

¹³ <http://www.urcabahamas.bs/news.php?cmd=view&id=190&pre=y>.

satisfactory measures are in place, both at the Board level and throughout the organisation, to deal with any claim of a conflict of interest.

4.4 CBL's share buyback

One respondent claimed that the buyback by CBL of its shares in 2010 was to facilitate the sale or privatisation of the majority shares in BTC to a foreign entity.

URCA's response to comments received

URCA has no information in its possession that suggests a connection exists between the transactions referenced by the respondent and, and notes the absence of any evidential support for the respondent's statement. URCA was not able to validate the respondent's comment and beyond that, URCA is not in a position to offer any further enlightening comment on the point raised.

4.5 Digitization of CBL's cable network

Respondents expressed concerns regarding the digitization of CBL's cable network and enquired as to URCA's role and involvement in CBL's digitization drive. In particular, the respondents opposed CBL's requirement that customers either rent or purchase STBs to receive digital signals on their television sets, noting that a STB is required for each television set within the home.

URCA's response to comments received

URCA wishes to set the record straight in respect of the above, and categorically denies any assertion or suggestion that it imposed an obligation on CBL requiring the cable television operator to digitize CBL's network or mandated anything to do with renting, selling or otherwise of STBs. It is a matter of public record that prior to URCA becoming the regulator for the pay television market in 2009 a longstanding policy existed at CBL whereby customers were forced to subscribe to CBL's SuperBasic cable television service if they only wanted internet service from CBL. This raised concerns for customers, and independent ISPs argued that the practice inhibited competition in internet services. Given URCA's mandate under the new legislative, policy and regulatory regime, following extensive public engagement URCA imposed

the obligation on CBL to untie broadband packages and cable television services to all existing and new customers.¹⁴

URCA advises that CBL was allowed the flexibility to employ an appropriate technical solution to comply with the untying obligation and CBL alone chose digitization. It was URCA's understanding at the time that CBL could have chosen more cost effective technical solutions that did not require digitization of its network but insisted that the other options would possibly expose CBL to signal theft.

It bears repeating that CBL independently made a commercial decision to digitize its network and URCA's Final Decision on SMP Obligations did not impose any specific obligation on CBL that would require cable television subscribers to either rent or purchase STBs. CBL could have chosen other cost effective technical solutions that did not require customers to rent or buy STBs but were afraid of the possibility of signal theft.

4.6 Tying of Cable TV and Broadband

One or more respondents stated that it is unfair for CBL to tie internet packages to SuperBasic.

URCA's response to comments received

As explained in Section 4.5 above, URCA reminds the respondents that CBL has an obligation to untie cable television and broadband packages to customers. URCA notes that the obligation is designed to enable existing and new customers to purchase a broadband service on a standalone basis, rather than having to also purchase cable television if they only want broadband from CBL. URCA and CBL agreed on a timetable for CBL to complete the untying of services in CBL's service areas.¹⁵ URCA notes that as at the last CBL submission (January 2013) on untying, CBL indicated that it had completed the untying of services in all areas by the end of December 2012, well ahead of the December 2013 deadline date imposed by URCA. As such, existing and new customers in New Providence, Grand Bahama, Abaco, and Eleuthera should now be able to purchase broadband internet on a standalone basis.

¹⁴ This requirement was an outcome of URCA's public engagement on types of ex-ante obligations or measures URCA should impose on BTC and CBL and culminated in the URCA April 2010 Final Decision requiring CBL to untie cable TV and broadband internet packages to existing and new customers.

¹⁵ New Providence, Grand Bahama, Eleuthera, and Abaco.

4.7 Pricing for service bundles

Some respondents complained about excessive charging for CBL's service bundle, noting that the monthly subscription price for the single package (SuperBasic and broadband internet) is higher than combining the standalone prices for SuperBasic and broadband internet. The respondents suggested that the bundled package should be provided at a discounted price.

URCA's response to comments received

URCA is appreciative of the concern raised by the respondents and proposes to address this issue in a separate regulatory proceeding. URCA reminds respondents that this consultation is solely for the purposes of deciding CBL's SuperBasic price application.

4.8 Lack of access to CBL's Digital backbone

It was suggested by one respondent that CBL is free to deny potential competitors access to CBL's digital backbone to offer competing products and services.

URCA's response to comments received

In response, URCA notes the comment and clarifies that there is no general obligation on CBL to provide access to its digital backbone and related facilities to competitors. The only access requirement applicable to CBL, at this time, is the obligation to offer wholesale access to the broadband network and services and access to the transmission network to other internet service providers on a resale basis.

Under this obligation, CBL has a mandate to prepare and publish on its website CBL's draft resale broadband product descriptions and specifications required for ordering and implementation of the service by competitors.¹⁶ For the avoidance of doubt, the obligation does not require CBL to provide end-to-end wholesale or interconnection services to persons wishing to compete in pay television services, national leased lines or voice related services. It is also worth noting that the obligation is not equivalent to an obligation to publish a Reference Access and Interconnection Offer (RAIO) with cost reflective tariffs.

¹⁶ URCA imposed a similar obligation on BTC.

4.9 Payment for overseas content

Respondents enquired as to whether CBL:

- is paying overseas content providers for channels received; and
- charging Bahamians for content which CBL has acquired illegally and for free from other content providers.

URCA's response to comments received

URCA understands that CBL obtains programming from various USA-based content providers under a compulsory licensing regime which requires CBL to pay overseas content providers for channels received.

URCA also advises that CBL's application included data on payments to overseas content providers for channels provided by CBL in The Bahamas. URCA considers that payments of this nature are legitimate business expenses that CBL may recover from pay television subscribers in The Bahamas.

If the respondents' underlying concern is about possible breaches of copyright laws, URCA considers that it does not have the legal mandate to direct a licensee as to how, when or where it may acquire copyrighted content.

4.10 Comments unrelated to SuperBasic

One respondent questioned the rationale for Bahamians using "Cable Bahamas to watch the local TV station – ZNS". The respondent reasoned that "... ZNS should be available to every Bahamian, including those who cannot afford to, or do not wish to use Cable Bahamas."

One or more respondents noted that the ReVoice service is characterized by dropped calls, no calls and customers being charged for calls that should be included within their calling plan. In addition, customers experienced long delays (e.g., over a week) in reconnecting service after disconnection. Meanwhile, respondents commented that CBL's internet service is irregular.

Comments were received that BTC's service is at a low in Exuma. Their internet service is constantly interrupted, and many landlines are down. Upgrading of infrastructure is the standard reason given for the poor service quality. Customers expect compensation for inconvenience when the service is unavailable for any length of time.

URCA's response to comments received

Although the above comments fall outside the scope of the current proceeding, URCA has included them here for completeness. Given the significance of the comments, URCA proposes to raise them separately with the respective companies.

5 Specific Comments by the Public

In this Section, URCA presents the principal relevant arguments raised by respondents in support or opposition to the SuperBasic price application put forward by CBL.

In summary, URCA noted that most respondents questioned the rationale for the proposed price level and expressed strong opposition to the proposal, asserting that the application is without merit and urging URCA to deny the request.

Below URCA highlights the main arguments put forward by opponents to CBL's price increase:

- the current monthly subscription for SuperBasic is overpriced;
- CBL is profitable, absent the price increase;
- CBL has introduced other price increases and charges;
- subscribers in Abaco and other Family Islands (where CBL does not have a physical presence) are already paying more than \$30/month for SuperBasic;
- CBL derive revenues from other services;
- CBL's price increase should await the emergence of a competitive pay television market in The Bahamas;
- CBL is seeking to raise money to "fund" a new business venture or recently introduced services;
- the proposed price increase is informed by external information that might not be applicable to The Bahamas;
- the application is not in line with pricing requests and approvals elsewhere;
- CBL's application came at a bad time when the economy is contracting;
- the application raises affordability concerns for certain segments of Bahamian households;
- CBL has not met its obligations to the Bahamian people;
- a new Basic Television package for all is a precursor to any price increase; and
- poor service quality and customer care received from CBL.

URCA encourages the public to continue to make its views known on all issues facing URCA as it exercises its mandate to promote the interest of persons in The Bahamas in relation to the electronic communications sector.

Next, URCA examines in further detail the arguments put forward by respondents against CBL's application, and sets out URCA's response to each comment.

5.1 The SuperBasic service was overpriced when introduced

A respondent asserted that the current SuperBasic price was set too high (overpriced) when it was first introduced in 1994.

URCA's response to comments received

URCA notes the respondent's comment and the absence of evidential support for the statement. URCA advises that it has no knowledge of the factors and information that informed any of the prices specified in CBL's 1994 licence. As stated previously above, URCA only became the regulator for the pay television market (in 2009) following the passage of the Comms Act and the URCA Act. URCA's predecessor, the PUC (Public Utilities Commission), did not regulate pay television services and no information exists within URCA whereby the basis on which the 1994 SuperBasic prices were set.

URCA further advises that the information underpinning CBL's rate application does not offer any support for an argument that the current SuperBasic price is overpriced. In other words, the information shows that at \$30/month CBL is not earning its regulated cost of capital on SuperBasic. The regulated cost of capital (10.86%) applicable to CBL was previously determined by URCA in November 2009¹⁷ and pursuant to section 40(3)(b) of the Comms Act this figure must be used as input to any regulatory measure that requires the inclusion of a reasonable rate of return.

Further, URCA notes that the respondent has not defined what it means by "too high" with reference to URCA's regulatory framework or the factors URCA has taken into consideration (as described in Section 2 above).¹⁸

¹⁷ ECS 23/2009 issued 2 November 2009 "Final Determination on: The Cost of Capital For Designated SMP Operators" available at www.urbahamas.bs

¹⁸ See also Section 2 of ECS 23/2012

5.2 CBL's profitability levels

Respondents commented that CBL has been profitable every year since it first entered the Bahamian electronic communications sector and approval of the application would only result in increased profits for CBL at the expense of customers.

URCA's response and comments received

URCA acknowledges the comments made by respondents on CBL's profitability (both historic and current). URCA understands that the respondents' comments are informed by publicly available data on CBL's statutory accounts which represents the combined profits from all of CBL's businesses (e.g., broadband, leased lines) and not just cable television services.

URCA also draws attention to other important information on CBL's profitability that URCA must consider in the context of its review of CBL's request. In particular, the annual results of CBL's separated accounts for SuperBasic, digital television services (i.e., high definition television and Pay per View), broadband internet, and leased circuits. CBL's accounting separation (A/S) results for 2009 and 2010 show that for all services CBL earned more than its regulated cost of capital (10.86%). At the same time, the disaggregated A/S results on SuperBasic show that CBL earned less than its regulated cost of capital on the service. Following the launch of the consultation (on 4 September 2012), CBL's third set of A/S results (based on 2011 data) has become available. This information also shows that at \$30/month CBL remains profitable overall but continues to earn less than 10.86% on SuperBasic. In other words, while the current price of SuperBasic television is not causing CBL to make losses overall, under the present Retail Pricing Rules, CBL has not recovered its cost of capital for SuperBasic television services. As discussed above, only CBL's SuperBasic television packages fall under the purview of the Retail Pricing Rules. For this reason, CBL's profitability in respect of CBL's other services is outside the scope of URCA's consideration and have no bearing on the narrower issue of URCA's review of the CBL price increase application.

5.3 Other price increases and charges

Respondents commented that CBL has introduced other price increases and charges, namely:

- late payment fee and reconnection fees;¹⁹

¹⁹ Respondents expressed the view that the late payment fee and reconnection fees are excessive, noting that CBL's reconnection is done remotely and does not always require a physical presence on customer premises. For this reason,

- introduction of higher priced premium packages; and
- rental and sale of Set-Top Boxes (STBs).

URCA's response from comments received

URCA concurs with the respondents that CBL has imposed other price increases although the \$30/month price for SuperBasic has remained fixed from its inception in 1994.

Late payment and reconnection fees

Concerning late payment and reconnection fees, URCA confirms that CBL presently charges a late payment fee of \$5.50 and reconnection fees of \$40 (residential) and \$50 (small enterprises). CBL has advised URCA that a late payment fee and reconnection fee were fixed at \$5 and \$35 respectively when introduced in 1994. These fees were subsequently increased by CBL in 2006 to \$5.50 and \$40. CBL has further advised URCA that neither the original or revised fees were sanctioned by any regulator nor, in any case, regulatory approval was not required.

In addition to the revenues from the monthly subscription, CBL's application included revenues obtained from one-off charges for installation and reconnection, and late payment fee. This means the revenues associated with late payment and reconnection fees are already reflected in CBL's price application. In addition and notwithstanding, the information presented by CBL in its application along with other information available to URCA indicate that the revenues derived from SuperBasic would be insufficient to cover the cost of provisioning the service, including CBL's regulated cost of capital. It is important to note that, based on the information available to URCA, even if CBL had omitted these other charges and fees associated with SuperBasic, the projected revenue shortfall for SuperBasic would have been greater. In other words, CBL would apparently need a rate of price increase in excess of \$8 to make the monthly price of SuperBasic more cost reflective.

URCA notes comments questioning CBL's level of charging in respect of late payment and reconnection fees. URCA has sought to validate this assertion by reference to similar charges in The Bahamas and elsewhere. In this regard, URCA refers to Table 1 below on late payment and reconnection fees charged by major utility providers in the electricity, water and sewerage, and telecommunications sectors in The Bahamas as well as cable television companies in other

respondents surmised that the reconnection fee does not indicate the true cost CBL incurred in reconnecting customers remotely.

countries. In respect of The Bahamas, URCA notes that the major utility providers charge reconnection fees of varying amounts but none charges a late payment fee. In contrast, cable television companies in other countries charge both late payment and reconnection fees. Table 1 also shows that CBL's late payment and reconnection fees are not outside the international mainstream. While URCA does not regulate such charges currently, in view of the information presented in Table 1, URCA is unable to establish that the level of charging levied by CBL for late payment and reconnection fees is unreasonable or outside international norms.

Table 1: Level of Reconnection and Late Payment Fees (BAH\$)

Operator	Reconnection Fee	Late Payment Fee
Bahamas Telecommunication Company	\$15	\$0
Bahamas Electricity Corporation http://www.bahamaselectricity.com/rates.cfm	\$25	\$0
Water & Sewerage Corporation (Bahamas)	\$21 for bills \$150 or less 10% of total balance for bills greater than \$150	\$0
Grand Bahama Power Company http://www.gb-power.com/en/home/residentialservices/billing/payingyourbill.aspx	\$30 - if reconnection requires use of a bucket truck then the fee is \$50	\$0
Cable Bahamas http://www.cablebahamas.com/?p=n&sectid=6&catid=79	\$40 (Residential) and \$50 (Small Businesses)	\$5.50
Flow Trinidad http://discoverflow.co/trinidad/digital-tv/installation-and-fees	\$14.32 (after voluntary disconnection) \$17.90 (after involuntary disconnection)	N/A
Time Warner Cable (USA)	\$5	\$8.50

UPC Netherlands http://vragen.upc.nl/app/answers/detail/a_id/251/related/1	\$32.60	N/A
Austar (Australia) http://media.austar.com.au/pv_obj_cache/pv_obj_id_6FCBD1E675AD333A77F97D5FDC7344D9B4730700/filename/price_guide.pdf	\$52.66	\$17.40
Virgin Media (UK) http://help.virginmedia.com/system/selfservice.controller?CMD=VIEW_ARTICLE&ARTICLE_ID=2901&CURRENT_CMD=SEARCH&CONFIGURATION=1002&PARTITION_ID=1&USERTYPE=1&LANGUAGE=en&COUNTY=us&VM_CUSTOMER_TYPE=Cable	N/A	\$16.13
Comcast (USA) http://www.comcast.com/corporate/Customers/Policies/SubscriberAgreement.html	May require customers to pay an installation fee and/or service activation fee in addition to a reconnection fee	10%/month for outstanding payment amount not paid in full after 45 days from date invoice/bill is issued. Garnett and Allegany County - \$4.95/month for each account not paid in full after 45 days from date invoice was sent. Hancock - \$2/month for each account not paid in full after 45 days from date of invoice was sent.
Cox Communications (USA)	\$29.99	-\$3.99 for non-payment 6 days after due date -\$4.99 per month in addition to the initial \$3.99 late fee for non-payment 25 days after due date
Cox Santa Barbara (USA)	\$29.99	\$3.99 (an additional late fee of \$4.99 may also apply)

Flow Jamaica http://discoverflow.co/jamaica/customer-care/billing/billing-faqs	\$9.78	\$2.71
Carib Cable (Anguilla) http://www.caribcable.com/index.php?option=com_content&view=article&id=150&Itemid=322	\$18.66	\$7.46
Bermuda Cablevision http://www.cablevision.bm/index.php/rates-and-fees	\$60 if reconnect entails travel \$15 if reconnect does not entail travel	\$5 – 30 days late \$10 – 60 days late \$30 – 90 days late
Innovative (US Virgin Islands) http://www.innovativevi.net/home/general-information	\$15.00	\$2.00
Karib Cable (St. Vincent and Grenadines) http://www.karibcable.com/vc/Karib_Cable_Services_User_Agreement/Digital_Cable_Television_Service_Agreement_.html	All past due charges must be paid in full in addition to a reconnection fee and one month's service charge in advance. In the event that this agreement is terminated due to non-payment twice in one year, then The Customer must pay a security deposit equivalent to 3 months rental prior to reconnection.	The Company shall be entitled to charge interest of 1.5% per month in respect of monies owed to it by The Customer.
Weststar TV (Cayman Islands) http://www.weststartv.com/terms_conditions.asp	\$24.39	\$12.20 monthly for bills not paid within 30 days \$48.78 rejected payment penalty i.e., returned check

CBL's Premium television packages

Over the years CBL has introduced several premium television packages. The packages include the SuperBasic channels and build on content from there with premium movie and sports channels. There are several premium packages differentiated by content and price.

As noted above, CBL's premium television packages fall outside the scope of the Retail Pricing Rules. However, URCA notes that within its application, CBL included revenues from CBL's higher priced premium television packages to SuperBasic. These revenue allocations appear to

be in line with the allocation factors specified in CBL's accounting separation methodology. It is also worth noting, however, that despite the inclusion of these revenue streams, from information available to URCA there is still a shortfall in SuperBasic revenue relative to the cost of provisioning the service, including CBL's regulated cost of capital. In other words CBL's analysis suggests that without the inclusion of revenues from CBL's higher priced premium television packages, the projected revenue shortfall for SuperBasic would have been greater.

Charges for Set-Top Boxes

URCA understands that wherever digitization of cable television networks has been adopted, there is usually a requirement for subscribers to rent or buy STBs to receive digital programming on their television sets. The use of STBs, therefore, imposes an additional charge on customers and is generally viewed by them as an effective increase in the price of cable television services.

Within the context of CBL's price application, URCA notes the following:

- STBs are customer premises equipment, and the associated charges are not regulated by URCA.
- CBL sets the rental and purchase price of the STBs it supplies subscribers and in reviewing CBL's price application the associated revenues are outside the scope of URCA's consideration.

Within CBL's 14 December 2012 response letter to URCA, CBL advised that existing analogue customers receive the first STB free of charge. That is, if the customer did not already have an STB from CBL, one STB would be provided free of charge. Customers then have the option to either rent or purchase each additional box from CBL, the prices of which are set out at Table 2 below.

Table 2: CBL's Pricing for STBs

STBs	Purchase Price	Monthly Rental Rates
DCT 700 (Reconditioned)	\$70 (3 months warranty)	\$3.00
DCT 700	\$125 (1 year warranty)	
DCT 2500 (Reconditioned)	\$49 (3 months warranty)	\$2.00
Pace Dallas (DVR)	\$515 (1 year warranty)	\$15 plus \$100 deposit
Pace HD Tango	\$179 (1 year warranty)	

Source: CBL's Letter to URCA dated 14 December 2012

URCA's review of the international experience, in respect of the policies of different cable companies on charging for STBs (see Table 3 below), shows a fairly mixed picture regarding whether or not cable television companies in other countries charge for the first STB. However, the information suggests that in all cases for which URCA was able to obtain relevant information, cable operators charge for additional STBs.

Table 3: Charging for Set-top Boxes

Country	Operator	Initial STB free? (Yes/No)	Further STB free? (Yes/No)
Trinidad and Tobago, http://www.flowtrinidad.com/customer-care/Installation/tabid/230/Default.aspx	Flow	Yes; first STB included in monthly rental package	No; additional STBs attract a monthly rental charge of TT\$24.99 per box
USA, http://ww2.cox.com/residential/santabarbara/tv/pricing.cox	Cox (Santa Barbara)	No; STB attracts a monthly rental charge of \$5.50	No; same rental charge applies as for initial STB
USA, http://www.timewarnercable.com/barstow/support/ratespricing.html	Time Warner Cable	No; STB costs \$6.50 per month	No; same rental charge applies as for initial STB
Netherlands, http://www.upc.nl/televisie/abonementenoverzicht/digitale-tv-starter/	UPC	Yes; initial STB is included in package price	No; an additional STB can be rented for €4 per month
Ireland, http://www.upc.ie/television/mrv/	UPC	Yes; initial STB is included in package price	No; additional STBs can be rented for €5 or €10 per month
Belgium, http://telenet.be/	Telnet	No; STBs need to be rented for €8 per month or purchased for €129	No; same charges apply as for initial STB
Australia, http://www.austar.com.au	Austra	Yes; "standard box" included in package	
Germany, http://www.unitymedia.de/pdf/Preisliste_Kabelanschluss(3).pdf	Unitymedia	Yes; "Single User" contract includes STB	No; any additional STBs can be rented for €4 per month
Germany, http://www.kabeldeutschland.de/fernsehen/digitales-fernsehen-fuer-kabelanschluss-nutzer.html	Kabel Deutschland	No; "Single User" contract available with and without STB (€4 per month implicit rental charge for STB)	No; additional STB has to be purchased.
UK, http://shop.virginmedia.com/build-your-bundle	Virgin Media	Yes; free STB included	No; up to 2 additional STBs available for a rental charge of circa £10 per month

URCA considers that the issue of payment for set-top boxes is one which warrants closer regulatory consideration in relation to both the regulation of the prices charged, and the issue of whether or not charging is appropriate in respect of the first and subsequent set-top boxes, and signals its intent to address this issue in conjunction with future market reviews, and its Consumer Protection initiatives scheduled for 2013.

5.4 CBL derives revenues from other services

Respondents commented that CBL generates additional revenues and profits from its other service offerings, in particular:

- internet and corporate data services and disaster recovery support;
- fixed-line residential voice and triple-play services arising from the SRG/CBL merger; and
- advertising on its cable television network.

URCA's response from comments received

As discussed previously, URCA notes that CBL has allocated revenues generated by its other electronic communications services to its SuperBasic television service. This includes revenues associated with CBL's broadband internet and higher priced premium television packages. The method used to allocate revenues from CBL's other services to SuperBasic is based on CBL's accounting separation methodology. However, even with the inclusion of these additional revenues, CBL's submissions indicate that it is not currently recovering its regulated cost of capital in respect of its SuperBasic television services.

5.5 Charges associated with payment of subscription fee

Subscribers in Abaco and other Family Islands (where CBL does not have a physical presence) commented that they are already paying more than \$30/month for SuperBasic. In particular, subscribers must make extra payments in the form of a \$1 fee per transaction (for payments made through commercial banks) and an additional \$1 fee to fax their receipt to CBL's Nassau office. Respondents opined that the additional fees effectively increase the standard monthly price they must pay to receive CBL's SuperBasic package. While recognising that the fees in question are not directly imposed by CBL, the respondents argued that they are a direct consequence of CBL not having a physical presence in these Family Islands. It was suggested that CBL should establish a physical presence in major Family Islands, noting that this would be feasible in Abaco given CBL's customer base in that Family Island.

The respondents highlighted that:

- subscribers in New Providence and other parts of the Bahamas do not incur these extra fees; and
- alleged that CBL is unfair and discriminatory in its treatment of customers in these Family Islands.

URCA's response to comments received

Given the description of the fees, URCA takes the position that CBL does not derive any direct financial benefits from the fees and proposes not to give any consideration to the issue in the context of this rate review. However, in URCA's view the issue still raises significant concern as to whether CBL is fulfilling its wider obligations to customers in terms of billing and related matters.

In this context, URCA sought to understand the arrangements between CBL and commercial banks and CBL and its subscribers in respect of bill collection. CBL advised URCA that where it does not have a business presence it:

"... send[s] a representative every 60 days to each Family Island (Inagua, Berry Islands, San Salvador, Abaco, Long Island, Andros and Exuma) to collect its subscription fees. One week prior to the representative's arrival to collect its issues community announcements informing of the representative's arrival. Upon the representative's return to office the following business day the payments are logged in the system.

CBL does not charge the customer anything additional for this.

CBL has arrangements in place with the major commercial banks to accept payments from ... customers ...".

In its submissions to URCA dated 14 December 2012, CBL did not confirm whether arrangements with commercial banks to collect its subscription fees require subscribers to pay a \$1 fee per transaction or indicated any awareness of the practice. Instead, CBL advised URCA that:

"CBL is charged a monthly service fee for this service. Depending on the bank it could be a percentage of payments received or a flat fee."

5.6 The pay TV market is not competitive

Respondents argued that the pay TV market is not competitive, and URCA must act to safeguard the interest of the public which may include rejection of the application pending emergence of a competitive pay television market. In that same vein, respondents commented that:

- there is no suitable alternative to cable television for residential customers;
- competition in cable television would be beneficial to customers by providing them with choice;

- in Canada customers have the option of purchasing their box from a third party and wanted to know why is this not the case in Bahamas; and
- Government should seek to break the monopoly by inviting another cable operator to compete with CBL.

URCA's response to comments received

URCA advises that the respondents' proposal to reject the price increase until competition emerges is not in line with the dictates of the current regulatory framework (as described in Section 2 above).

It is recognized that the electronic communications sector in The Bahamas is in transition towards a more competitive environment. It is a matter of public record that since 2009 a number of initiatives have been adopted to foster competition between licensees. As the situation currently stands, cellular mobile is the only market that is closed to competitive entry. The current ECS Policy recognizes that competition in pay television services is desirable for customers by providing them with choice.²⁰ In this regard, persons that satisfy URCA's licensing requirements may obtain the requisite licences to operate and provide pay television services in direct competition with established operators.

URCA was not able to validate respondent's comment that cable television subscribers in Canada have the option to purchase STBs from third party suppliers. URCA also in its review of other markets could not find any precedents for the practice.²¹ Within its submissions dated 14 December 2012 on issues arising from the consultation, CBL put forward reasons why it would object to subscribers having the option to source STBs from third party suppliers. CBL cited technical feasibility, network security concerns as well as compatibility requirements and software and intellectual property issues. URCA notes CBL's feedback at this stage which appears to present reasonable justification for its approach, but reserves the right to revisit the issue should there be a basis for such a review in the future.

²⁰CBL's exclusive cable Franchise Agreement and Broadcasting Licence expired in October 2009 and was not renewed.

²¹Some Customer Premises Equipment (CPE) are provided in a competitive environment wherein customers have the option to purchase handsets and other devices from third party suppliers subject to technical specifications. However, URCA understands that in a cable TV environment the practice would raise interoperability and property rights concerns. These matters are clearly outside the scope of the current exercise and cannot be considered at this time.

5.7 Price increase is to fund CBL's other businesses

Respondents suggested that CBL might have been less than transparent in its application, and claimed that the proposed rate increase is motivated by CBL's desire to raise money to "fund" a new business venture or recently introduced services.

URCA's response and comments received

Claims that the application is motivated by other commercial endeavours being pursued by CBL remain unsubstantiated. Such assertions are not borne out by the information available to URCA regarding CBL's current cost and revenue profile. As URCA understands it, the business rationale for the proposed increase is to align SuperBasic pricing with the cost of provisioning the service. This is because CBL apparently has a revenue shortfall on SuperBasic in that the price of the service is below the cost of service provisioning (including CBL's regulated cost of capital on the service).

5.8. CBL's benchmarking

One respondent noted that the proposed price increase is informed by external information (from other markets) that might not be applicable to The Bahamas. Citing CBL's benchmarking data, the respondent challenged the inclusion of Jamaica and Cayman Islands in the benchmarking exercise and noted that their exclusion from the sample support a \$6.75 increase in the monthly subscription fee for SuperBasic.²²

URCA's response to comments received

URCA's notes the comments on the use of external information in CBL's application and comments questioning the adequacy of CBL's benchmarking sample.

In URCA's view, comments on the use of external information in CBL's application does not reflect URCA's understanding of CBL's request and supporting information provided therein. URCA understands that the application is principally informed by evidential information specific to CBL's operations in The Bahamas. As such, the information presented by CBL reflects the operational circumstances in The Bahamas. In Section 3.3 of the consultation document (ECS 23/2012), URCA described the financial information presented by CBL; explained that at

²²The respondent reasoned that Jamaica and Cayman Islands are outliers, "might have slightly skewed the results" citing demographics, and market size as the basis for the suggestion. It is the respondent's view that both countries should be deleted from the sample.

current price levels, SuperBasic revenues would be less than the estimated Fully Allocated Cost (FAC) of provisioning the service (including 10.86% in RoMCE²³); and the proposed rate increase is to make SuperBasic pricing more cost reflective.

URCA also referenced CBL's benchmarking study on cable television pricing in 24 Caribbean jurisdictions.²⁴ URCA recognises that the sample included jurisdictions with similar characteristics and accepts that this does not mean CBL's approach is free of limitations. However, within the context of these limitations (as set out in the consultation document), URCA maintains that CBL's approach appears to be based on a reasonable methodology. URCA, therefore, having considered the respondent's feedback, rejects the proposal that Cayman Islands and Jamaica be deleted from the sample. In any case, URCA does not believe the exclusion of both countries from the sample would significantly impact URCA's review of the application having regard to primary information underpinning CBL's application.

5.9 Price increases and approvals elsewhere

One respondent stated that the application is not in line with pricing requests and approvals elsewhere.²⁵ However, the respondent neither provided details of whether the comment is in reference to electronic communications or other regulated sectors, nor identified the countries reviewed by the respondent.

URCA's response to comments received

In the absence of specific details supporting the respondent's comment, URCA is unable to make an informed response to the respondent's observation that the requested price increase is out of line with price applications and approvals elsewhere.

5.10 Timing of CBL's application

Respondents reiterated that CBL's application came at a bad time when the economy is contracting, and *"consumers' buying power has shrunk considerably and families are on the proverbial financial edge"* with many Bahamians on the brink of financial collapse, in danger of

²³ Return on Mean Capital Employed

²⁴ The study shows that the average current price for comparable cable television offerings in the surveyed jurisdictions is \$37.60/month relative to CBL's current price level of \$30/month and the proposed price of \$38/month.

²⁵ The respondent claimed to have reviewed "... rate increases around the world ..." and noted that "... there was no entity researched applying for percentages greater than ten percent. In most cases they were not awarded more than 7.8%."

losing their homes, mortgages in serious arrears, and many employees have had no salary increase for a long time.

URCA's response to comments received

URCA is appreciative of the comments on the timing of CBL's application. URCA advises that it has no control over the timing of CBL's application. The timing of the application is strictly a commercial decision for CBL to make and URCA has no role in CBL making that particular decision.

5.11 Application raises affordability concerns for the public

Respondents contended that the current price level is unaffordable and the proposed new price level will make SuperBasic less affordable for residential and commercial subscribers. Respondents believed the financial burden of the proposed new price level will inflict further financial hardship on the unemployed, persons on fixed incomes (e.g., pensioners), low income earners and households. Further, any increase in the price for commercial SuperBasic will ultimately result in higher prices for consumers and increase the cost of living for all.

URCA's response to comments received

URCA is appreciative of the respondents' comments on the expected impact on the overall objectives of the Comms Act should URCA approve the requested price increase and a Basic Television Service is not available for all. This type of feedback reaffirms and validates URCA's position, as discussed throughout the consultation paper and this final decision document, that the proposed price level would make cable television services less affordable for some segments of Bahamian households. To this end, URCA remains committed and unwavering in its resolve that the making available by CBL of Basic Television Services throughout all populated areas in The Bahamas in accordance with the provisions of the Comms Act is of particular importance, especially in the context of the SuperBasic price increase being sought by CBL.

URCA also shares the respondents' view that commercial enterprises may seek to recover any increase in the price of the commercial SuperBasic package from their respective customer bases. This is entirely a business decision for businesses to make and URCA has no role in that decision.

5.12 CBL has not met its obligations

Some members of the public stated that CBL has failed to meet “the terms of their agreement to put cable throughout The Bahamas within a specific timeframe, and in many instances they have used BTC’s network to facilitate some of their work”.²⁶ In this regard, URCA should not grant any increase in the price of the service at this time.

URCA's response to comments received

URCA notes that this issue has been a recurring theme throughout the consultation. URCA notes the performance targets specified in the following documents:

- CBL’s 15 year exclusive Franchise Agreement (dated 13 October 1994) and related Broadcasting Licence of even date and duration both of which expired in October 2009;
- the obligations entrusted on CBL in s. 119(1) and Schedule 5 of the Comms Act in respect of Basic Television Services; and/or
- the BTC/CBL Memorandum of Understanding (MOU, i.e., joint venture) dated 4 July 2008 for the provision of over-the-air television signals to residents of specified Family Islands free of charge.

URCA offers no comment regarding CBL's compliance or lack thereof with commitments/performance targets specified in the 1994 Franchise Agreement and Broadcasting Licence. This is because the requirement to comply with any such obligations/conditions predated URCA becoming the regulator for the pay television market and effectively expired in October 2009, shortly after URCA came into existence and the Comms Act came into force.

Instead, URCA focuses its response on the requirements imposed by section 119(1) and Schedule 5 of the Comms Act and similar arrangements (i.e., the BTC/CBL MOU) that are currently in place.

²⁶Respondents noted that there are many islands/settlements in the country without basic cable television services while noting that cable “... has now become a necessity since it is now the only way one can get to see ZNS Community Bulletins, news, etc.” “Cable TV is now a necessity – it is no longer a luxury but an important means of keeping current on world affairs and education”.

URCA agrees that CBL is not in full compliance with the obligations entrusted on CBL in section 119 (1) and Schedule 5 of the Comms Act to provide “*affordable basic television services to all ...*” in The Bahamas. URCA accepts that CBL, consequential to the 2008 MOU, is now providing over-the-air television signals to residents in several specified Family Islands²⁷ free of charge. URCA considers that service to have similar attributes with the Basic Television obligations entrusted on CBL under the Comms Act.

URCA also notes that CBL does not currently offer a Basic Television Service to customers in New Providence and other Family Islands (e.g., Andros, Berry Islands, Bimini, Eleuthera, Exuma, Grand Bahama, Inagua, Long Island, and San Salvador) where CBL operates either terrestrial cable television infrastructure or services. Based on the 2010 population census, URCA conservatively estimates that currently more than 70%²⁸ of the population of The Bahamas does not receive the Basic television Service as defined in section 119(1) and Schedule 5 of the Comms Act.

URCA maintains that the benefits to customers from a Basic Television package may be widespread given the disparities in access to free-to-air television in The Bahamas, and the important role that access to information plays in disaster management and preparedness, as well as social cohesion. URCA understands that CBL has the technical capacity to meet its obligations at this time and ensuring that CBL complies with such obligations remains a key objective of URCA. CBL has presented URCA with no argument which justifies its failure to date to comply with its legal obligation to make available an affordable Basic Television Service throughout, at a minimum, all of those areas where it currently provides services. It is clear to URCA that the increase in SuperBasic services, in particular to residential customers, will further disadvantage those persons whom the provision of an affordable Basic Television Service was intended to benefit, and will therefore operate against the furtherance of the objective set out in section 4(b)(i) of the Comms Act.

For this reason, URCA is unwavering in its insistence that CBL comply with the obligation entrusted on it by section 119(1) and Schedule 5 of the Comms Act by offering an affordable Basic Television Service to all populated areas in The Bahamas.

²⁷Schedule 1 of the MOU lists the Family Islands as: Cat Island, Grand/Walkers Cay, Sweeting/Deep Water, East End Grand Bahama, Ragged Island, Rum Cay, Moores Island, Crooked Island, Acklins Island, Mayaguana, South Eleuthera, Andros-South and North.

²⁸ Total population of Bahamas is 351,461 with New Providence representing 246,329.

5.13 New Basic TV Package

Respondents expressed support for the introduction of a Basic Television Service throughout The Bahamas as soon as possible, arguing that availability of a lower priced television package would provide choice to customers. In that same vein, respondents emphasized that they only subscribe to SuperBasic to obtain local news (i.e., to get ZNS-TV) and an affordable Basic Television package (with less channels but inclusive of ZNS-TV) would satisfy their appetite for local news and information.

Respondents believed the main subscribers to a Basic Television package would be persons on fixed incomes, the unemployed, low-income earners and other groups most vulnerable to the economic downturn who would find the proposed new price level less affordable. Given their affordability concerns, respondents further suggested that the package which implements the Basic Television Service must become available prior to the introduction of any price increase for SuperBasic and should be in the \$5-\$10 range.

There was no consensus on the channel composition of the Basic Television Service. The main proposals are that the package should include:

- (i) ZNS-TV, Parliamentary Channel, CBS/FOX/NBC/ABC in Florida, the Weather Channel and CNN to ensure Bahamians are kept abreast of the news and information about hurricanes and natural disasters;
- (ii) all of the children's educational channels; or
- (iii) channels with greater local programming (such as ZNS-TV, JCN-TV Cable 12, Weather Channel, Parliamentary Channel, Bahamas Real Estate Channel and Bahamas Christian Channel).

URCA's response to comments received

URCA welcomes the respondents' feedback on the general merits of an affordable Basic Television Service for all. URCA notes that there is strong public support for a Basic Television package and the proposal that this package must become available prior to the introduction of any increase in the monthly subscription for residential SuperBasic. URCA maintains that consumer benefits from a Basic Television package may be widespread given the important role that access to information plays in disaster management and preparedness, as well as social inclusion, amongst others.

Regarding the respondents' proposal that an affordable package should be in the \$5-\$10 range, URCA considers that it would be premature to comment on the price of the Basic Television Service before finalization of the channels comprised in the package, amongst other issues. It

remains URCA's hope that CBL will proceed with alacrity to submit a proposal to URCA as to the channels that will comprise the Basic Television Service and the corresponding price, failing which URCA will take appropriate steps to procure same.

5.14 Other specific Comments

A respondent enquired as to whether:

- CBL has provided documentation to support the requested price increase.
- URCA is allowed to audit the business for its true performance.
- URCA can require CBL to streamline the business prior to approval of the price increase.
- What added benefits will accrue to customers from the price increase (e.g., increased channels and content, or increasing internet speed or service improvements).

URCA's response to comments received

In reply, URCA refers the respondent to review the Retail Pricing Rules wherein: (i) the documentation and evidential support underpinning permanent price charges are specified;²⁹ and (ii) URCA is empowered to request additional information and/or clarification from the SMP operator relating to the proposed price change.³⁰ As noted above, in Section 3 of the consultation document URCA outlined and discussed the information contained in CBL's application relative to the Retail Pricing Rules. URCA also refers the respondent to review the public version of CBL's application wherein CBL presented relevant information and analysis in support of its rate application.

URCA acknowledges the question on whether URCA can require CBL to streamline its operation. URCA considers that it might not have the legal mandate to direct a licensee to streamline its operation, as suggested by the respondent. If the respondent's concern is about efficiency considerations, then URCA notes that promoting efficiency is one of the main objectives of the Comms Act, and believes that there are other ways of achieving this objective.

URCA notes the comment questioning the likely benefits that may result to customers from the requested price increase. URCA advises that this issue was not discussed in CBL's application

²⁹ See paragraphs 13 to 23 of the Rules available at www.urbahamas.bs.

³⁰ See paragraphs 11.4 and 19 of the Rules available at www.urbahamas.bs.

and neither has CBL considered the issue in its response to the consultation. However, given the objective of CBL's application (i.e., a price increase for SuperBasic services), URCA considers that the respondent's issue is not critical to URCA's analysis of CBL's application and is outside the scope of the public consultation.

5.15 Quality of Service Issues

Respondents are in general agreement that the requested price increase is unwarranted because of the poor service quality and customer care received from CBL. One respondent asserted that:

"The basic cable product is essentially a bunch of old re-runs. Programs were not current and often times channels were not available and not clear. Calls to customer service proved to be a waste of time and when the technician finally arrived a week or two later, the problem still remained unsolved. Additionally, I received no refund for the time I was without the service",

Another respondent claimed that CBL was:

"by far is the WORST company I have dealt with in my 40 years in the Bahamas. As a consumer I am totally opposed to Cable Bahamas proposed increase. They provide shoddy service; you can be 2/3/4 days with no service and no compensation."

URCA notes that poor service quality has been a recurring theme throughout the entire consultation which suggests a very high level of customer dissatisfaction with the quality of service and customer care provided by CBL. Seven main groups of concerns have been raised by respondents and are discussed in turn in this Section below:

i. Comments on poor service coverage

Poor service coverage tops the list of main concerns for subscribers, especially in the Family Islands. Respondents complained that the service is patchy and cited specific examples in support of their complaints:

- Parts of Long Island (e.g., south of Clarence Town) does not get either the free-to-air six channel package or SuperBasic.
- In Abaco, SuperBasic is available in Winding Bay and Cherokee Sound but is unavailable at Yellow Wood despite the nearby presence of CBL's infrastructure.

- Off-air coverage was unavailable in adjoining communities and settlements where the service is provisioned.

URCA's response to comments received

URCA agrees that poor service coverage is unacceptable and deserves urgent attention given the important role that access to Basic Television Services plays in disaster management and preparedness, as well as social cohesion. URCA is committed to ensuring that all licensees subject to universal service and/or coverage obligation (including CBL) provide an acceptable level of coverage to customers throughout The Bahamas.

URCA will address service coverage issues in URCA's forthcoming regulatory proceeding on quality of service and related issues.

ii. Comments on service outages

Respondents complained about regular outages of service with multiple channels "temporarily off the air"³¹ for extended periods without any explanation by CBL and that the problems persist even after complaints have been lodged with CBL. In that same vein customers also mentioned poor video and audio quality as other areas of major concern. Thus, respondents are of the very strong view that they are paying for a service they do not receive and are not properly compensated for service outages. Respondents proposed that CBL should pro-rate customers' accounts for periods when subscribers are without service.

URCA's response to comments received

URCA understands that a service provider may experience service outages from time to time due to factors outside of its control; for example, due to force majeure or Acts of God. However, URCA is also aware there are instances when services might be interrupted to facilitate network upgrades and maintenance. Under these circumstances, the service provider has a responsibility under Condition 23.1 of their Individual Operating Licence (IOL) to notify customers of any planned interruption in service in a timely manner. Further, Condition 23.2 of CBL's IOL similarly requires CBL to notify URCA and subscribers, to the extent practicable, of any unplanned interruptions.

It is URCA's view that customers should be adequately compensated where quality of service levels are not adhered to including the unavailability of service. URCA appreciates the urgency

³¹ Includes major news and entertainment channels such as MSNBC, CNN, BBC World News (36), Fox News, Weather Channel (37), Arts and Entertainment, and Lifetime.

of the situation and will move to expedite its quality of service initiatives in the shortest timeframe possible. This will include ensuring that appropriate quality of service metrics are in place in respect of service outages for all major operators, and compensation levels and refunds payable to customers if quality of service levels are not met.

iii. Comments on programming

Respondents expressed displeasure on a number of programming issues, notably:

- the programmes of several channels (e.g., TNT, Space, Discovery, Boomerang) are primarily Spanish (although The Bahamas is an English-speaking country). For this reason, respondents commented that customers are denied the benefits of a service for which they are paying a monthly fee and other charges;
- continuous repetition of programmes; and
- the Cable Guide (i.e., Channel 5) does not always provide correct information to viewers.

Respondents are of the view that CBL modified the SuperBasic package from what was originally contracted with customers without prior consultation and that any channel that seems to become a viewing favourite with customers is removed from the SuperBasic lineup and placed in a premium package where a higher price is charged.

URCA's response to comments received

URCA notes the concern regarding inclusion of foreign language channels within the SuperBasic package. URCA was able to ascertain from CBL that this is a copyright/contractual requirement between CBL and its content providers wherein some programmers consider The Bahamas and other English-speaking Caribbean countries as part of Latin America. CBL claimed it is not aware that this issue is a major source of customer dissatisfaction but noted that CBL as part of a joint effort of the Caribbean Cable Co-operative Ltd. and independently will always agitate for programming attractive to their market.

URCA recognizes that, in dynamic industries, operators should have commercial flexibility to respond to rapid technological changes and changes in the wider business environment. This must be balanced with the service provider's responsibility to properly advise customers of any impending changes. URCA reminds CBL that Condition 17.3.1 of CBL's IOL requires CBL to notify customers of modifications to a condition in customer contracts. URCA will address this issue as part of its Consumer Rights and Obligations work stream in 2013.

iv. Comments on complaints handling

Respondents commented that CBL did not have in place a physical presence or appropriate mechanisms in the Family Islands (e.g., Abaco and Long Island) to receive and handle customer complaints. Some respondents suggested that CBL establish a business office on the Island of Abaco to ensure delivery of a reasonable quality of service. Respondents are of the view that the size of the existing customer base in Abaco makes this proposition feasible.

Respondents also expressed displeasure with the long response times by CBL to have their complaints addressed.³² This is a major area of concern for customers, especially in those Family Islands where CBL does not operate a business office. Customers noted that the absence of suitable alternatives leaves them with no choice but to continue to subscribe to the “shoddy” service. One respondent commented that it normally takes 45-60 minutes waiting time for a customer service representative to acknowledge callers to CBL’s customer service department. The customer is of the view that the department is not adequately staffed and appropriate mechanisms are not in place to ensure customers concerns are appropriately addressed in a timely manner.

Other concerns raised by respondents in respect of complaints handling include:

- The late arrival of bills – respondents in Grand Bahama stated that the issuance and posting of bills from Nassau often times result in the delay in receipt of bills with 2 bills arriving at the same time.
- Billing cycle issues – respondents suggested that CBL’s billing cycle should be determined by URCA.

URCA’s response to comments received

URCA accepts that the geography of The Bahamas can pose some challenges for service providers in respect of the issuance and posting of bills to subscribers in the Family Islands. URCA is also aware that CBL has attempted to solve this challenge with a channel dedicated to viewing billing information. URCA also notes that SuperBasic is a standard price so the monthly fee is known by subscribers ahead of time. This observation also holds true for premium channel packages. URCA accepts that there is likely to be monthly fluctuations in payments for

³² Respondents commented that it can take weeks before a technician can come out to fix a problem plus customers have to wait at home possibly all day between the hours of 9 a.m. and 5 p.m. (no specified time can be given) to wait on that technician.

pay-per-view and other ad hoc channels. However, even in this instance, subscribers have the option to view the information on the dedicated bill view channel.

Regarding the billing cycle and other concerns expressed by customers, URCA advises that it is developing a comprehensive set of standards, rights and obligations which will apply to all providers issued with IOLs and Class Operating Licences Requiring Registration. As part of this initiative, URCA will ensure that proper complaints handling procedures are in place and customers' complaints are dealt with expeditiously.

v. Comments on service quality metric and commitment

Respondents noted the general absence of a quality of service commitment by CBL, whilst one respondent commented that a quality of service metric should be part of the licence under which CBL operates.

URCA's response to comments received

URCA's accepts respondents' reasoning on the urgent need for quality of service metrics for cable television services. CBL's IOL does not contain specific parameters but rather has in place a mechanism for the establishment of quality of service metrics. URCA intends to develop such parameters under a separate regulatory proceeding and will expedite this work stream in the shortest timeframe possible.

vi. Comments on "hidden" fees and related matters

Respondents complained about what they perceived as "hidden" fees being applied to cable television service provided by CBL. In the view of respondents some charges are generally unknown to customers. Respondents thereafter recommend that these "hidden" charges should *"have been printed on the billing to make the customers aware of added costs ..."*. Respondents further stated that the mere publication of a price list on the internet is not satisfactory for a number of reasons:

- not all customers have access to the Internet;
- customers might not have time to research information on the Internet; and
- the Internet may have downtime.

URCA's response to comments received

URCA notes that respondents were less than specific in respect of their comments about "hidden" fees and charges generally unknown to customers. In its December 5, 2012 letter to

CBL, URCA requested CBL to provide information on all fees (“hidden” or otherwise) applicable to SuperBasic. In response, CBL verified that the charges in Tables 4 and 5 below are applicable to SuperBasic:

Table 4: Charging for Residential SuperBasic

Fee Categories	One-off Fees	Recurring Fees
Security Deposit:		
<ul style="list-style-type: none"> • Single Service 	\$100	
<ul style="list-style-type: none"> • Multiple Services 	\$150	
Installation	\$40	
Transfer	\$40	
Reconnection:	\$40	
<ul style="list-style-type: none"> • Non-payment 	\$40	
<ul style="list-style-type: none"> • Voluntary disconnection* 		
Late payment fee	\$5.50	
Monthly subscription fee		\$30
Service call	\$25	
Returned payments	\$25	
Additional outlets	\$20	
Purchase of STBs	See Table 2 above for rates	
Rental of STBs		See Table 2 above for rates
Digital Nodes	\$4.95	
Analogue Nodes	\$5.99	

* No charge if deposit was left on account.

Table 5: Charging for Small Business SuperBasic

Fee Categories	One-off Fees	Recurring Fees
Security Deposit:		
• Single Service	\$150	
• Multiple Services	\$200	
Installation	\$50	
Transfer	\$50	
Reconnection:		
• Non-payment	\$50	
• Voluntary disconnection*	\$50	
Late payment fee	\$5.50	
Monthly subscription fee		\$50
Service call	\$25	
Returned payments	\$25	
Additional outlets	\$20	
Purchase of STBs	See Table 2 above for rates	
Rental of STBs		See Table 2 above for rates
Digital Nodes	\$4.99	
Analogue Nodes	\$5.99	

* No charge if deposit was left on account.

Having reviewed the information received from CBL, URCA did not find any evidence of what could be described as “hidden” fees. URCA also understands that all relevant charges incurred by customers are usually included on the customer’s statement for that billing cycle. However, URCA is inviting customers who have had specific experiences with "hidden" fees to bring the evidence to URCA’s urgent attention.

On the issue of publication of price lists, URCA refers to Condition 35.1 of CBL’s IOL, requiring the licensee to:

“... publish charges, terms and conditions, including bundled charges, terms and conditions ... for all Carriage Services related to the markets in which it is determined or presumed to have SMP.”

For the purposes of Condition 35.1, publication shall be effected by placing a copy of the information on any relevant website operated or controlled by CBL. The list of charges is published on CBL’s website and would be accessible to customers who have Internet service. Customers also have the option of viewing the list of charges on CBL’s dedicated bill view channel. Whether these processes are sufficient to address the respondents’ concerns, URCA advises that it is developing a comprehensive set of standards, rights and obligations which will apply to all providers issued with IOLs and Class Operating Licences Requiring Registration. As part of this initiative, URCA is contemplating additional measures to ensure that consumers are supplied with information regarding the fees charged by service providers.

vii. Comments on unsanctioned use of customer account

A respondent commented that customers should be protected from unauthorized purchases on their accounts. The customer explained that a visitor to his home was able to access his account and purchase premium cable television services without his approval.

URCA’s response to comments received

URCA has been made to understand by CBL that there are systems in place on CBL's network to guard against accidental or unauthorized use of customers’ accounts. CBL advised that it has provided training, instructional materials, and assistance to subscribers regarding the use and operation of parental control mechanisms, and guidelines as to maintenance of security from accidental and unauthorized use of a customer’s account.

6. Responses by CBL to Consultation

Within its written response to URCA's consultation document, CBL:

- maintains that the requested price increase is fair and reasonable and is designed to align the price of the service with the underlying cost of its provision (including CBL's regulated rate of return on capital employed); and
- the proposed price level would generally remain affordable to consumers in The Bahamas.

CBL then outlined its substantive comments on the consultation. Three main groups of concerns have been raised and are discussed in turn in this Section:

- Section 6.1: Regulatory Framework Applicable to SuperBasic television services;
- Section 6.2: The Application's Compliance with the Retail Pricing Rules; and
- Section 6.3: Affordability Requirement.

6.1 Regulatory Framework for SuperBasic Services

In this Section, URCA summarizes CBL's comments in respect of the regulatory framework applicable to SuperBasic and sets forth URCA's responses to those comments. In particular, CBL commented that:

- CBL is engaged in discussions with URCA regarding provision of a Basic Television Service as part of its universal service obligations and therefore the discussion of these issues are beyond the scope of the current price application.
- In the consultation document, URCA focused almost exclusively on the objective of promoting affordability at the expense of the other "equally important objectives" like promoting competition, efficiency, productivity, investment and innovation, and availability of a wide range of content services of high quality.
- Affordability is not defined in the Comms Act.

URCA's response to comments received

URCA's response to the comments on affordability (second and third bullets above) is included in Section 6.3 below as part of URCA's response to specific comments on this issue.

As stated as part of the URCA/CBL discussions on the provision of a Basic Television package, URCA considers CBL's non-compliance with the universal service obligations entrusted on CBL in

section 119 (1) and Schedule 5 of the Comms Act as unacceptable. This is because it is clear to URCA from those discussions that CBL presently has the technical capability to offer a Basic Television package to more than 70% of Bahamian households. URCA further notes that the discussions that CBL alluded to have not led to the desired outcome. In particular, CBL is not currently offering a Basic Television Service in those islands where more than 70% of the population of The Bahamas reside and where CBL already has the technical capability to do so.

URCA also reminds CBL that compliance with the aforementioned obligations assumes greater public significance when weighed in the context of CBL's request for a substantial increase in the monthly subscription for residential SuperBasic versus all customers in The Bahamas not having the option of the Basic Television package.

In contrast to CBL, URCA considers that CBL's failure to make available a Basic Television package for all in all populated areas in The Bahamas has a strong bearing on URCA's review of the SuperBasic price application. URCA maintains that CBL's rate application impacts on other equally important matters of public significance that also must be considered by URCA (as described in Section 2 above and in Section 6.3 below).

6.2 Application's Compliance with Pricing Rules

In this Section, URCA summarizes CBL's comments in respect of the application's compliance with the Retail Pricing Rules and sets forth URCA's responses to those comments.

- Maintaining current SuperBasic price could be predatory.
- Relative to URCA's statement that *"concerns about price predation would not typically apply"* in the context of a price increase request, CBL opined *"... that URCA added this remark to seemingly lessen anti-competitive concerns that might otherwise arise from holding the price of SuperBasic below cost."*

URCA's response to comments received

URCA duly notes CBL's comment and advises CBL that the statement should not be construed as URCA expressing a view on whether maintaining the current price of \$30/month for residential SuperBasic would give rise to concerns about predatory pricing. URCA elaborates further on this point below.

As defined in the consultation document (Section 3.2.1, p.9), predatory pricing occurs where a dominant licensee deliberately incurs short-term losses or forgoes profits in the short-term so as to foreclose (or be likely to foreclose) a competitor (or a potential competitor), with a view to strengthening or maintaining its market power. Accordingly, the necessary condition for

predatory pricing would be that the dominant licensee reduces its price to drive competitors out of the market. With this in mind, URCA considers the following points are worth emphasising:

- CBL is not proposing to reduce the residential SuperBasic price (\$30/month) below its current level.
- CBL has not explicitly put forward this reasoning as justification for increasing the price above its current level.
- CBL presented no analysis and information to demonstrate that maintaining the current price would foreclose (or is likely to foreclose) a competitor (actual or potential) from the pay television market.
- CBL's supposition on predatory pricing runs counter to CBL's response below (under the heading "**Competitive Alternatives to SuperBasic**") wherein CBL noted that there currently exists several competitive alternatives to CBL's SuperBasic television offerings in the marketplace. URCA stresses that it has not received any formal complaint from other market participants (actual or potential) alleging that the current SuperBasic price is a barrier to competition, thereby triggering URCA's procedures governing anti-competitive conduct by a dominant operator.
- As to whether the current SuperBasic price could be considered predatory would require further analysis and information not provided in the current CBL price application.

URCA takes seriously its duty to promote sustainable competition amongst licensees and will exercise its powers to address any substantiated evidence of predatory pricing in pay television services in The Bahamas. Such an allegation would need to be made in accordance with the ECS competition guidelines.

i. Competitive Alternatives to SuperBasic

CBL contested URCA's statement in the consultation document that "*CBL faces no actual or potential competition ...*" in the pay television services market, including SuperBasic. CBL argued that URCA's 2010 SMP Determination in respect of pay television services is outdated and it is currently factually incorrect for URCA to comment that CBL's faces no actual or potential competition in the market. CBL claimed that there are a growing number of competitive

alternatives to SuperBasic available to Bahamian consumers today that were not available in 2009.³³

URCA's response to comments received

URCA is appreciative of the clarification on its statement that "*CBL faces no actual or potential competition ...*" in the pay television market. In reply to CBL, URCA stresses that pay television services in The Bahamas are predominately provided by CBL and, hence CBL has been deemed as having SMP in that market consistent with the legislative basis for the current price regulation of SuperBasic. Also, the information provided by CBL is insufficient to demonstrate that it does not have SMP in this market. URCA further advises CBL that the main arguments and data put forward by CBL would be relevant to a proceeding on SMP in the pay television market which is outside the scope of this current proceeding.

ii. CBL's Benchmarking sample

CBL was critical of URCA's statement in the consultation document that CBL's "...benchmarking study did not provide any indication as to the degree to which prices for cable TV services in the 24 surveyed Caribbean jurisdictions are cost oriented." CBL then explained that on average the surveyed prices are set through market forces rather than regulation and therefore "provide a reasonable estimate of the competitive level of prices for cable TV service in the Caribbean region which are directly comparable to CBL's SuperBasic service."

URCA's response to comments received

From URCA's perspective, differences in legislative frameworks between countries in the sample and in the Bahamas are not in dispute. Within the consultation document and in other exchanges with CBL, URCA has always acknowledged the unique features of the framework governing pay television services in The Bahamas.

URCA understands that the cable television markets across the Caribbean exhibit varying degrees of market concentration. For this reason, it is very unlikely that market-based pricing in those Caribbean countries results in cost oriented pricing where those markets are dominated

³³ Including over-the-air TV services (e.g., ZNS), Satellite TV, IPTV to be launched by BTC in early 2013, and various free and pay per view online video entertainment services and platforms (such as Netflix, YouTube, Apple iTunes) available today compared to when URCA conducted its SMP analysis in 2009.

by one or more major cable operators.³⁴ A priori, URCA would not expect prices to reflect underlying costs unless there was perfect competition between operators in that market or if there was effective regulation. CBL has not submitted any evidence to demonstrate either of these characteristics in the benchmark countries.

As such, URCA stands by its statement that CBL's "...benchmarking study did not provide any indication as to the degree to which prices for cable TV services in the 24 surveyed Caribbean jurisdictions are cost oriented."

iii. Objectives of the Comms Act

CBL commented that rejection of its rate application would mean CBL continuing to provide SuperBasic below cost, and noted that this would run contrary to the pricing framework and the objective of promoting competition as set out in section 4 of the Comms Act.

URCA's response to comments received

As noted in Section 2 above, URCA has had regard to a range of criteria consistent with the governing legislation, the Sector Policy, regulatory measures issued by it, and best practice considerations.

CBL's estimates of the cost of providing the Super Basic service are based on a fully allocated cost (FAC) methodology. However, as set out in the consultation document, URCA notes that economically efficient pricing does not require prices to be set equal to the average per unit FAC, although this may provide a reasonable cost benchmark in the context of this review. Therefore, it is possible that prices set below FAC are still economically efficient. In particular, given that FAC typically includes a proportion of costs that would be incurred whether or not SuperBasic services are provided (fixed common costs), considering incremental cost may allow a better consideration of efficiency. That is, comparing a given price against only the costs that CBL would avoid by not providing the SuperBasic service would give us a better indication of CBL's incentive to continue providing the service. This is driven by the possibility of CBL recovering these fixed common costs from its other activities and not necessarily in the way that a FAC methodology would imply.

Further, prices that reflect the costs of an efficient operator may also provide better incentives for entry to the market than those based on CBL's costs. This is because there would only be

³⁴URCA is of the view that a determination on whether prices in the surveyed comparator countries are cost oriented would require information and analysis of the market dynamics and cost structure of cable television companies in the comparator countries.

entry to the market (and therefore competition) if an entrant were able to provide the service efficiently.

Since reliable cost information is only available for CBL on a FAC basis, it is therefore not possible to definitively conclude that current prices do not reflect underlying costs and are therefore inefficient.

In addition, URCA has had regard to wider concerns including ensuring the affordability of the SuperBasic product and the direct impact on consumers of the proposed price increase (as described in further detail below based on the consultation document and Section 2 of this decision statement). The rest of this Section responds to CBL's comments on the issue of affordability.

6.3 Affordability Requirement

Below URCA summarizes and responds to CBL's comments on affordability and related issues.

i. Applicability of affordability principle to SuperBasic

CBL stated that the issue of affordability should in principle apply solely in the context of a Basic Television Service provided as part of its USO as defined in the Comms Act. This would have fewer channels than the current SuperBasic package. Based on this, CBL argued that affordability should not apply to the SuperBasic service and that the SuperBasic service should not be considered as the Basic Television Service required as part of its USO.

URCA's response to comments received

As set out in Section 2 above, URCA has a responsibility to ensure the affordability of the SuperBasic television service. This is as a result of the USO on CBL. URCA is firmly of the view that absent a Basic Television package (as defined in the Comms Act) a change in the price of the SuperBasic (RevPrime) television package has a direct bearing on the availability of affordable electronic communications services in The Bahamas, and must be considered as part of its deliberations in respect of this application.

ii. Affordability is not defined in the Comms Act

CBL maintained that the concept of "affordability" is not defined in the Comms Act and for this reason URCA has found it necessary in the consultation document *"to attempt to construct a definition of or set of criteria to assess affordability."*

Further, CBL submits that in the consultation document URCA set forth no "... clear and practical affordability criterion or set of criteria ..." and as such, "... the question of what may be considered "affordable" remains a vague and subjective concept".

URCA's response to comments received

As set out in the consultation document, URCA recognises that a definition of "affordability" is not specified in the existing legislative or policy framework. Nevertheless, URCA believes its proposals in the consultation document are constructive, and, for present purposes, provide an unambiguous and practical way for assessing affordability of residential SuperBasic.

Further, the consultation provided CBL with a reasonable opportunity to put forward an alternative definition of the concept of "affordability" for URCA's consideration. However, CBL did not do so.

URCA further noted that the absence or omission of a definition of "affordability" in the Comms Act cannot be used as a reason not to fulfil the obligations entrusted on CBL in section 119(1) and Schedule 5 of the Comms Act.

The intent of the Comms Act is unambiguous in its provision (in force since 2009) that CBL provides an affordable Basic Television package for all. As described above, absent this defined service an increase in the price of CBL's SuperBasic package has a direct bearing on the achievement of the electronic communications policy objectives.

Within the consultation document, URCA presented information to show that the concept of "affordability" as specified in the Comms Act:

- is not exclusive to electronic communications services in The Bahamas;
- has been applied to electronic communications services (i.e., telephony, broadband internet, but not pay television services) in other countries (this was in response to CBL's comment that it was not aware of international precedent);
- can be applied to pay television services; and
- from the standpoint of statutory interpretation or construction of the word "affordable", URCA proposes to adopt the common or natural and ordinary meaning of "affordability" as found in any common dictionary. URCA then stated that the Encarta

English Dictionary gives one definition of “affordable” as “to be able to meet the cost of something without unacceptable difficulty.”³⁵

In the consultation document, URCA also identified the criteria for assessing affordability; for example income, cost of living, subscription levels, existence of alternative pay television services to SuperBasic, and customer billing arrears. URCA accepts that the list is not exhaustive and other factors could be considered subject to data availability.

URCA also advises CBL that, in the absence of definitions of the concepts of “affordable” and “affordability” in the Comms Act, constructing “... a definition of or set of criteria to assess affordability” is consistent with the powers and functions given to URCA under sections 7(a) and (f) and 8(1)(e) and (m) of the Comms Act. In particular, section 7(a) and (f) of the Comms Act provide that:

“For the purposes of carrying out the electronic communications policy objectives, URCA has the following functions —

(a) to regulate the electronic communications sector by exercising the powers given to it under this Act; ... and

(f) to perform any other functions assigned to it by this Act or any other law”.

Section 8(1)(e) and (m) of the Comms Act provide that:

“For the purposes of carrying into effect the electronic communications policy objectives, URCA shall have the power to issue any regulatory and other measures and in particular shall —

(e) issue directions, decisions, statements, instructions and notifications; ... and

(m) exercise any other powers assigned to it by this Act or any other law”.

iii. URCA adopted a limited/targeted approach to affordability

CBL suggested that URCA has employed a limited approach to affordability of SuperBasic, to the extent that it is relevant, by focusing on the ability of a subset of Bahamian households (low-income households) to afford the new price. CBL expressed concern that URCA's approach could result in the price of SuperBasic being kept below cost so that the service will be

³⁵ See Section 4.1.1 (p.17) of the Consultation Document.

affordable for the "lowest-income" households even though there would be households willing to pay more. CBL contended that this outcome would perpetuate market inefficiencies and would undermine investment, innovation and competition.

URCA's response on comments received

URCA notes the concerns expressed by CBL on the likely ramifications if SuperBasic is subjected to an affordability test. Nevertheless, URCA is satisfied that CBL can avoid this outcome by introducing an affordable Basic Television Service for all in which case the price of residential SuperBasic would cease to be a consideration in respect of the availability of affordable electronic communications services to the population of The Bahamas. In Section 5 of the consultation paper, URCA specifically set out the proposed next steps CBL should follow going forward.

iv. URCA's examples of definitions on affordability are limited

CBL asserted that URCA only presented examples of definitions of affordability that make specific reference to "low-income" households or individuals. Further, CBL stated that the examples only related to telephony, internet, broadband, and postal services, but not to pay TV services.

URCA's response to comments received

URCA conducted extensive research on affordability definitions and presented **all** the information from its research. Additionally, the information presented is from a number of diverse, respected and reputable sources, including a regional development bank, the European Commission, independent consultancy agency, the United Nations (ITU), amongst others. URCA notes that in its response to the consultation, CBL did not provide any additional references to affordability definitions for electronic communications services. Therefore, URCA rejects any claim of bias in the examples presented in the consultation document on affordability definitions.

As part of URCA's research, URCA did not find any definition relating specifically to pay television services. Nevertheless, URCA reiterates that the concept of affordability can be applied to pay television services in the same way that it applies to telephony, internet, broadband, and postal services. Further, CBL did not present any arguments to URCA to the contrary.

v. Emphasis on promoting affordability in URCA's review

CBL commented that within the consultation, URCA focused almost exclusively on the objective of promoting affordability at the expense of the other objectives specified in the Comms Act, and stressed that rejection of the application on affordability grounds would result in CBL continuing to offer SuperBasic below cost. CBL contends that this approach would run contrary to other noted and “equally important objectives” like promoting competition, efficiency, productivity, investment and innovation, and availability of a wide range of content services of high quality.

URCA's response to comments received

As noted in Section 2 and in Section 6.2 of this document in response to CBL's comments, URCA has reviewed CBL's application with due consideration of a range of criteria based on the current regulatory framework. In other words, URCA has given consideration to affordability and to a range of other economic criteria. URCA notes that within CBL's application, CBL did not give adequate consideration to the affordability objective of the Comms Act. Neither did CBL express a view on the likely impact the proposed price increase would have on the overall ECS Policy objectives given CBL's failure to provide an affordable Basic Television package to more than 70% of the population of The Bahamas.

CBL made general comments on URCA's affordability analysis, as follows:

a) CBL's affordability submissions

In reply to URCA's findings on affordability of the existing and proposed price levels for the default Basic Television Service (i.e., SuperBasic), CBL stated the following:

- URCA suggested "... that the \$30 price may not be affordable to the general public in 1994 and ... is still not affordable today".
- "SuperBasic subscription levels increased from zero to close to 50,000 within five years of its launch contradicts URCA's suggestion that the service may have been generally unaffordable in the mid-1990s."
- URCA presented "...no evidence that ... cable TV services in the surveyed Caribbean jurisdictions may be considered a luxury rather than an essential service and, therefore, not necessarily "affordable for all".

URCA's response to comments received

In response, URCA submits that CBL might be less than complete in its reporting of URCA's preliminary findings under the first and second bullets above.

For ease of reference, URCA summarizes its preliminary findings below in respect of the discussion in the consultation document on the affordability of SuperBasic:

- URCA could not confirm CBL's statement that the SuperBasic price of \$30/month "*must have been considered as not only fair and reasonable, but it must have been considered affordable for the general public*" when it was made a condition of CBL's 1994 License.³⁶
- URCA acknowledges the effort made by CBL in measuring the affordability of the existing and proposed price levels for SuperBasic³⁷ but URCA considered that the approach is inappropriately narrow and incomplete by focusing exclusively on moderate and high income earners.³⁸
- In contrast, URCA adopted an approach that builds on CBL's submissions on affordability but with three modifications. Firstly, given known shortcomings with average income (e.g., GDP per capita) as a measure of household budget, URCA examined affordability using median household incomes. Secondly, rather than focusing on persons with moderate to high incomes, URCA examined affordability for every level of household income (deciles 1 to 10) in The Bahamas.³⁹ Thirdly, URCA put forward three (3) other complementary affordability criteria: availability of alternative pay television services to SuperBasic; subscription levels; and customer billing arrears. URCA could not consider the latter because of lack of data availability.

URCA's analysis led to a different set of outcomes relative to CBL's conclusions, with URCA commenting that:

- There is a good chance that some households in lower income deciles (in particular decile 1) would find the current and proposed price levels (\$30 and \$38/month) for the SuperBasic package unaffordable, and reiterated that this could be one reason for CBL's

³⁶CBL has not provided evidential support to show that the price was deemed affordable for all in 1994.

³⁷ See Section 4.1.2 of the Consultation Document available at www.urbahamas.bs.

³⁸ See Section 4.2 of the Consultation Document (Available at www.urbahamas.bs) for URCA's comments on CBL's affordability tests.

³⁹ This is in line with the Comms Act that the Basic Television package must be affordable for all.

admission that a number of customers appear only to subscribe to the service for a limited part of the year.

- Although persons earning moderate to high incomes would not find the price levels unaffordable it still remains that the pricing, especially at \$38/month would not be affordable for all, and approval of the price increase, absent a lesser priced Basic Television option, would undermine the overall objectives of the ECS Policy.

Based on the above, URCA concluded that:

- when faced with a 27% rise in the price of SuperBasic, some existing customers might retain the service but at the cost of a reduced standard of living, because other types of expenditure would be displaced;
- alternatively, existing customers may choose to disconnect from the service which would also imply a reduction in welfare and living standard; and
- the price may lead to currently unconnected customers deciding not to take up the service at all in the foreseeable future.

Regarding the third bullet above, URCA accepts that it provided no empirical support for the point. This is because, of the electronic communications sub-markets in the Caribbean, pay television is the least researched. However, URCA notes that this is beginning to change due to convergence and other market dynamics.

In any case, URCA does not believe the absence of empirical support means that the comment is without merit. URCA maintains that it is unaware of any requirement, legal or otherwise, in the Caribbean for cable television packages to be affordable. Further, URCA's understanding that most, if not all, of the countries benefit from over-the-air television services provided on a nationwide basis. For these reasons, and given URCA's knowledge of the regional situation, URCA affirms that it may be the case in the Caribbean that cable television services are thought of more as a luxury rather than as an essential social service that should be affordable for all.

URCA notes that CBL itself, in its response, did not provide any evidence to counter URCA's comment.

URCA stands by the information presented in Table 2 of the consultation document, and repeated below as Table 4 for easy reference. Table 4 expresses the annualized cost of

residential SuperBasic service (whether priced at \$30 or \$38 per month) as a percent of median household income for decile 1 through to decile 10 households. This table allows a wider consideration of affordability to the narrow approach employed by CBL. This is because, in URCA’s opinion, CBL’s analysis focused only on persons earning moderate to high income and whether such persons would afford the new price level.

Table 4: Ratio of Annualized Cost of SuperBasic to Median Household Income (2011)

Household Decile	Number of Households	Household Income Distribution (B\$)			Annualized Cost of SuperBasic as Share of Median Income (%)	
		Aggregate Income	Mean Income	Median Income	Current Expenditure (\$30 x 12)	Proposed Expenditure (\$38 x 12)
1	10,075	25,390,647	2,520	2,856	12.61	15.97
2	10,070	85,551,643	8,496	8,760	4.11	5.21
3	10,115	140,430,824	13,883	14,000	2.57	3.26
4	9,920	196,592,197	19,818	20,080	1.79	2.27
5	10,640	279,463,778	26,265	26,400	1.36	1.73
6	9,625	319,848,409	33,231	33,400	1.08	1.37
7	10,095	418,829,783	41,489	41,600	0.87	1.10
8	10,050	525,962,060	52,335	52,200	0.69	0.87
9	10,245	710,516,284	69,352	70,000	0.51	0.65
10	9,595	1,165,126,875	121,431	100,476	0.36	0.45
Total	100,430	3,867,712,500	38,512	30,000	1.20	1.52

From the information presented in Table 4 above, URCA affirms that:

- o Neither the current price nor the proposed price level pose affordability concerns for households earning moderate to high incomes.

- Not all households in The Bahamas will find the new SuperBasic price affordable. For example, both the current and proposed prices for SuperBasic represent a sizeable share (12.61% and 15.97%) of median income for households in decile 1.

As set out in the consultation document, URCA reiterates that it is without information on the characteristics of Bahamian households that determine affordability. Instead, URCA has based its definition of affordability on international studies.⁴⁰ URCA understands that low-income households are typically characterized by irregular employment and income, and limited discretionary spending power. Given the above, URCA reaffirms that there is a good chance that some households in lower income deciles (in particular decile 1) would find the current price (\$30/month) for the SuperBasic package unaffordable. URCA reiterates that this could be one reason why a number of customers appear to only subscribe to SuperBasic for a limited part of the year.

Additionally, faced with a 27% rise in the price of the service, some existing customers in decile 1 might retain the service but at the cost of a reduced standard of living, because other types of expenditure would be displaced. Alternatively, they may choose to disconnect from the service which would also imply a reduction in welfare and living standard. Further, the proposed price increase may lead to currently unconnected customers deciding not to take up the service at all (i.e. either for a few months a year or permanently) in the foreseeable future. It may also be possible that low income households may be worse affected since they may be less likely to have access to alternative forms of media content (e.g. internet access).

One of URCA's primary objectives is to prevent these outcomes and thereby promote universal service (i.e., Basic Television Services at an affordable price to all populated areas and specified institutions).

For all of the above reasons, URCA maintains its conclusion that CBL's price application raises significant affordability concerns for customers, especially those with the least ability to pay the price increase such as low-income households.

b) *Subscribership levels as a measure of affordability*

CBL was strident in its response to URCA's comment in the consultation document that *"high subscribership rates do not ensure that price levels are affordable"*, stating that URCA's comment *"is at odds with basic economics"*, makes *"no economic sense"* and such

⁴⁰"Affordability of Telephony and Internet: An International Overview", Claire Milne, May 2009; and "Portfolios of the Poor", Collins, Morduch, Rutherford, and Ruthven, 2009, Princeton University Press.

“...an arbitrary notion should not be used to establish the definition of or criterion for affordability.”

URCA’s response to comments received

In reply, URCA considers that it should explain further the comments ascribed to it above.

Firstly, URCA reminds CBL that within the consultation paper URCA explained that subscribership levels provide information on whether customers have the financial means to subscribe to a service. URCA then proposed using this criterion along with other indicators to measure the extent to which SuperBasic is affordable for all.

Secondly, in recognition of a comment on subscription levels⁴¹ by the US Federal Communications Commission (a reputable regulator), URCA added that *“high subscribership rates do not ensure that price levels are affordable”*. URCA stands by this statement. It is recognized by the FCC that subscribership levels might not always reveal whether consumers are spending a disproportionate amount of income on a service. Therefore, while a service may be affordable, and a subscriber may value it at least as much as they pay for it, it may still impose hardship on users. As such, in the context of an affordability test, subscribership levels must be used with care and considered alongside other criteria.

vi. Pay television subscribership in Bahamas

CBL commented that a high percentage of Bahamian households subscribe to some form of pay television services and provided data showing that there are 69,000 SuperBasic subscribers and another 30,000 satellite TV subscribers. CBL concluded that the data presented is further proof that pay television services, specifically including SuperBasic, are generally affordable.

URCA’s response to comments received

Based on the analysis presented in Table 2 (p.22) of the consultation paper (and reproduced in Table 4 above), both the existing and proposed price levels for residential SuperBasic would pose no affordability concerns for persons earning moderate to upper incomes. In respect of households earning less than moderate incomes, the Table also shows that both price levels raise affordability concerns for some segments of Bahamian households, especially when weighed in the context of customers not having the option of a cheaper Basic Television

⁴¹The US Federal Communications Commission stated that subscribership levels are not dispositive of the issue of whether a price is affordable.

package and CBL's admission that a number of customers appear to only subscribe to SuperBasic for a limited part of the year.

Further, while it appears that a high number of Bahamian households receive SuperBasic, URCA advises caution. URCA's view is premised on three reasons:

- (i) CBL did not show the split between residential and commercial users and the figure of 69,000 appears to also include commercial customers;
- (ii) a similar concern arises in respect of the reported data (30,000 subscribers) on satellite subscribership most of whom are likely to be persons earning moderate to high incomes; and
- (iii) there is the likelihood of double counting in that some subscribers to satellite TV services most likely also subscribe to SuperBasic due to the need for local news and information and absent a lesser priced Basic Television package comprising ZNS-TV.

7 Final Decision

URCA, having reviewed:

- CBL's application dated 1 December 2011 for an increase in the price of its SuperBasic television service;
- representations and responses made by CBL in correspondence between CBL and URCA regarding CBL's application; and
- comments and responses to the public consultation, by interested stakeholders and CBL,

and having had regard to:

- the provisions of the Communications Act, 2009 (as amended); and
- the relevant regulatory documents and measures,

considers that approval of CBL's application for an increase in the price of its SuperBasic television package would not further the objectives of the electronic communications policy in that it would reduce the extent to which persons in all regions in The Bahamas have affordable access to high quality networks and carriage services. Accordingly, URCA hereby denies CBL's application to increase the monthly price for residential SuperBasic by 27% (\$8). Given this decision, the proposed price increase for commercial SuperBasic which is tied to the residential SuperBasic price increase request is also denied.

URCA considers that the objective set out in section 4(b)(i) of the Comms Act is a key component of ensuring that electronic communications services promote the economic and social welfare of The Bahamas, and that the achievement of that objective is underpinned by the inclusion of the universal service obligations, including the requirement that those services be affordable. By imposing the basic obligations on specific providers, and ensuring that those services are provided at an affordable price, the Comms Act ensures that the most vulnerable members of the society can access the key services, and thereby enables participants in the electronic communications sector to offer other services on commercially competitive terms without disenfranchising material segments of the society.

URCA finds that while in many parts of The Bahamas CBL provides services that meet the requirements of a Basic Television Service as required by section 119 and Schedule 5 of the

Comms Act, in areas where the SuperBasic package is offered CBL does not meet this requirement at all. The locations where the Basic Television Service is not available cover a majority of the population of The Bahamas, and therefore the obligation set out in section 119 and Schedule 5 of the Comms Act to provide an affordable Basic Television Service to all populated areas in The Bahamas, remains substantially unmet by CBL. URCA finds that SuperBasic at the proposed increased price, would present affordability concerns for material segments of the society.

URCA finds that in the current circumstances the universal service obligation placed on CBL by section 119 and Schedule 5 of the Comms Act, to provide an affordable Basic Television Service (comprising six channels including ZNS and the Parliamentary Channel) to all populated areas in The Bahamas is highly relevant to CBL's application for a price increase. URCA stresses that the ability of persons to access Basic Television Services throughout The Bahamas is a key component of social and economic inclusion and that it must ensure that the provisions of the Comms Act which seek to secure that ability are implemented to the greatest extent possible.

In the absence of compliance by CBL with its obligation to provide an affordable Basic Television Service, any increase to the price of the SuperBasic package would undoubtedly reduce the extent to which affordable television services are provided to persons in The Bahamas, at least in relation to those areas where SuperBasic is provided. URCA considers that it would be contrary to the objectives of the Comms Act, the ECS policy, and the intent of the universal service provisions in the Comms Act for it to approve the proposed price increase in such circumstances. URCA's finding would be different if a package which met the requirements of the Basic Television Service (including affordability) were available in those areas where CBL offers its SuperBasic package.

URCA considers it relevant that CBL, the party seeking to increase the price of its SuperBasic package, is the same party responsible for and failing to meet the requirement to provide an affordable Basic Television Service, in the very areas where it offers and now seeks to raise the price of its SuperBasic package.

It is material and worth noting that CBL's application was first submitted to URCA in December 2011, and URCA's initial views, presented as early as 19 January 2012, raised this issue with CBL and sought CBL's views and proposals for addressing CBL's failure to meet its universal service obligations, and the likely impact of that failure on CBL's application. URCA notes that CBL has neither sought in the intervening period to comply with its obligations under the Comms Act, nor proffered any technical or other grounds which would explain why CBL has failed or is unable to comply with the statutory obligation. URCA notes that the obligation in the Comms Act is clear and unambiguous, and that CBL's network currently has the full capability to provide

an offering compliant with the Basic Television package obligation, at least in those areas where it offers the SuperBasic television package. Similarly, CBL has not submitted any argument to URCA which overcomes or mitigates the likely negative impact of the proposed price increase on persons who would be affected by URCA's affordability concerns regarding the proposed price increase in SuperBasic.

URCA must consider the implication of the proposed increase in the price of CBL's SuperBasic package, and specifically the affordability concerns which arise as a result of the said increase. URCA is satisfied that the proposed increase, if approved, would detrimentally affect that portion of the Bahamian public that can least afford the services, and whom the affordability requirements imposed by the universal service obligations in the Comms Act are most intended to benefit.

URCA has also considered the many consumer and quality of service concerns which respondents have raised regarding the services provided by CBL. URCA thanks respondents for those comments, as they have brought to the fore a number of key issues which URCA acknowledges need regulatory attention as a matter of priority. The objective of ensuring affordable access to *"high quality networks and carriage services in all regions of The Bahamas"* and promoting *"availability of a wide range of content services which are of high quality"* as set out in section 4(b)(i) and (vi) of the Comms Act, combined with the provisions of Part VIII of the Comms Act, establish a clear responsibility for URCA to address the quality of service and customer care issues raised.

URCA also considers there must necessarily be a link between the quality of services provided, and the price charged for those services. However, the issues of consumer protection and quality of service are very wide ranging and relate not to CBL alone, but to all providers of electronic communications services in The Bahamas. URCA therefore has not sought to address those issues in its decision, but has instead commenced two processes for completion as a matter of urgency in 2013, in which it will comprehensively address the issues of Consumer Protection, and Quality of Service. URCA also intends to ensure that these issues are fully explored in the widest practicable public consultation.

Annex 1 – Public Relations Support Schedule

CBL Application for Price Increase to SuperBasic/RevTV Prime

7-week Consultation period: Tuesday September 4th to Friday October 19th, 2012

	DATE	TIME	ACTIVITY/EVENT
WEEK 1			
1	Tue, Sep-4 th	10:00 a.m.	Press Conference
2	Wed, Sep-5 th	7:00 a.m.	CEO and DPR guest appearance on Morning Blend, FM96.9
3	Fri, Sep-7 th	6:00 a.m.	DPR guest appearance on Bahamas@Sunrise, ZNS TV13
WEEK 2			
4	Mon, Sep-10 th , Sep-25 th & Mon Oct-1 st	n/a	Publication of information sheet as ad in print media: the Nassau Guardian & the Tribune on Sep-10 th and Oct-1 st ; Freeport news on Sep 25 th
5	Mon, Sep-10 th	n/a	12,000 info sheets dispatched to Family Islands via individual PO boxes and general delivery.
6	Mon, Sep-10 th	4:30 p.m. – 6:00 p.m.	CEO and DPR guest appearance on Jeffrey with Jeff Lloyd, FM106.5 and FM 96.9
7	Tue, Sep-11 th	6:30 p.m.	New Providence Town Meeting, Holy Cross Anglican Church Hall
8	Sun Sep 16 th	4:00 p.m. – 6:00 p.m.	CEO and DPR guest appearance on Parliament Street, Island 102.9FM with Patty Roker
9	Sun Sep 16 th	7:30 p.m.	Airing of 1 st New Providence town meeting on ZNS TV-13
WEEK 3			
10	Mon, Sep-17 th – Tue Sep-18 th	6:30 p.m.; 9:00 a.m.; 10:00 a.m.;12:30 p.m.	CEO Abaco Visit: Town Meeting; guest appearance on BCN; guest spot on Radio Abaco; combined luncheon meeting w local Rotary Club and Chamber of Commerce

	DATE	TIME	ACTIVITY/EVENT
11	Thur, Sep-20 th	11:00 a.m.	DPR guest appearance on Coast 106.1 FM (Inagua), live call-in show, with George Harris
12	Thur, Sep-20 th	12:30 p.m.; 3:00 p.m.	CEO Exuma Visit: Informal lunch meeting with government, community and business leaders; guest appearance on Exuma Breeze, FM 98.3, live call-in show with Dwight Hart; one-on-one Q&A opportunities with the CEO
WEEK 4			
13	Thur, Sep-27 th – Fri Sep-28 th	6:30 p.m.	DPR Long Island Visit: Town Meeting; given size of island, interested persons will be bussed to the meeting from both north and south
WEEK 5			
14	Mon Oct 1 st – Tue, Oct-2 nd	6:30 p.m.; 12:30 p.m.	DPR Grand Bahama Visit: Town Meeting ; luncheon meeting Rotary Club of Freeport
WEEK 6			
15	Sun Oct 14 th	8:30 p.m.	Airing of condensed 2-hr production of Abaco, Grand Bahama and Long Island town meetings on ZNS TV-13
WEEK 7			
16	Mon Oct 15 th	11:30 a.m.	CEO and DPR guest appearance on Issues of the Day, Love 97.5FM with Wendell Jones
17	Tue Oct 16 th	2:30 P.M.	CEO and DPR guest appearance on Reality Check, Guardian Radio 96.9FM with Chrissy Love
18	Tue Oct 16 th	6:30 p.m.	2 nd New Providence Town Meeting, The Town Centre Mall
GENERAL NOTE: Activities supported by electronic and print media advertising over the full 7-week consultation period			

Annex 2 – Summary of Comments at Public Meetings

This Annex summarizes the main/substantive concerns and comments raised by members of the general public at town-hall meetings:

1st Town Meeting – New Providence 11 September 2012:

Key concerns and comments raised by consumers at first town meeting held on 11 September 2012 at Holy Cross Anglican Church Hall were as follows:

- Why is Cable Bahamas charging a late fee of \$5.50 and a reconnection fee of \$40? That is too high!
- Cable has already received an increase when they started charging for a box for each TV.
- There are regular outages of service and it can take weeks before a technician can come out to fix it.
- Cable Bahamas does not give you any refund or compensation for any outage under three (3) days.
- Cable should be here answering some of these questions.
- How did Cable Bahamas arrive at the \$8 increase?
- URCA has already made its decision and this is just an exercise in futility or a farce
- More than half of the channels are in Spanish and we are an English speaking country.
- What about the obligation for free internet to the schools?
- Now that Cable has three services, why can't we get a discount for the bundle?
- Why do I still need to purchase a box if I already have a digital TV?
- Is Cable Bahamas still stealing channels and not paying for them?
- The chairman of URCA is the former lead attorney who represented Cable. URCA's integrity is compromised and how can we trust URCA's decision to be objective in this matter?
- What about the submission of 2012 financial information?
- The channels in the basic package have changed over the years (no more BET, etc.) and customers now have to purchase additional channels so that we can have channels that we want to watch. Why not just charge for the channels that people really want and watch (an a la carte menu)?
- Cable is already profitable and made \$20m last year. Why should I pay them an increased fee so that they can make more millions?

2nd Town Meeting – Abaco (Marsh Harbour) on 17 September 2012

- URCA should conduct a public opinion survey/poll to determine if there is majority support for the requested price change.
- The six channel basic TV package should be available prior to imposition of any price increase in SuperBasic.
- CBL has not fulfilled its commitment to provide internet and cable services and must be required to meet those obligations.
- Poor customers' relations in Abaco as CBL have no office on the Island to receive payments and handle customer complaints. CBL need office space to deliver a reasonable quality of service in Abaco. The customer base exists to make this a feasible proposition.
- Pricing for SuperBasic is different in Abaco and Family Islands are already paying in excess of \$30 a month for SuperBasic because of additional charges they must incur to pay their bills. Example, payments are made through the commercial bank for a fee of \$1 per transaction and customer must then fax receipt to Nassau office for an additional \$1 fee. Thus, whilst subscribers in New Providence pay \$30 those in Abaco and Family Islands are charged higher for the same service.
- \$5 late fee is unfair.
- Quality of service metric should be part of the licence under which CBL operates.
- CBL should be present at Town Meeting to understand its customers and their issues and to explain its price application.
- Proposed price increase will impact low income households and earners the hardest.
- Abaconians should disconnect the service, go back to DirecTV, and take internet services from BTC.
- Due to economic conditions, persons are unable to pay the current monthly charge and will not be able to pay the proposed price increase.
- Overwhelming number of persons in attendance objected to the price increase. Low-income earners and households will be the hardest hit by the price increase.

Key concerns and comments raised at joint meeting with Rotary Club and Chamber of Commerce (Abaco) on 18 September 2012:

- CBL need to establish a business office in Abaco to facilitate payment of bills and receive complaints to indicate service outage.
- Number portability is required
- Cable coverage patchy and is not clear why service is not provided to some communities. As a case in point the service is available in Winding Bay and Cherokee but is unavailable at Yellow Wood despite presence of infrastructure.

- a 27% increase in residential SuperBasic is significant.
- BTC's internet service quality has been on the decline since the last three years.

3rd Town Meeting – Long Island (Clarence Town) on 27 September 2012

Key concerns and comments raised by consumers at town meeting held on 27 September 2012 at Clarence Town Community Centre were as follows:

- CBL has gotten worse over the years with the deletion of channels.
- Complained about Spanish channels, Quality of Service problems with CBL and that CBL does not give its customers any choices in packages or programming.
- Felt CBL should upgrade its offerings to Family Islands. Wanted to know why CBL was not present at the meeting.
- Cable 12 is not part of SuperBasic package in Long Isl. CBL has only brought SuperBasic to Long Island since May 2012 and was upset that they now want to increase the price.
- Felt that persons who would be most affected by price increase would be poor persons. Stated that Long Island south of Clarence Town does not get either 6 channel package or SuperBasic, and that when CBL first got its licence, settlements of Glintons and Burnt Ground were supposed to get 6 channel package.
- Stated that when electricity goes off, so does the 6 channel package.
- Complained about no technician in Long Island so have to wait 2 or more weeks for someone to carry out service calls. Felt that CBL should not get 27% increase. No Internet in Long Island besides BTC. Wants better service and better channels. Would not subscribe to CBL if he could get ZNS-TV from another source.
- Parts of Long Island do not have either cable TV or 6 channels. Felt that Long Island was being short-changed by CBL with only 42 channels in SuperBasic that does not include PBS or Cable 12 channels.
- Wants TV viewing options without the high increase. Deadman's Cay to Clarence Town just got SuperBasic in May 2012. Many persons rely on seasonal work in order to pay for CBL. Object to price increase.
- South Long Island has just gotten CBL. Long Island does not have cable TV throughout the island. URCA has to look out for everyone.
- Complained about requirement for multiple set-top boxes when he used to get SuperBasic without a box but now needs a box in order to get channels on each TV. Wanted to know when additional fees charged by CBL would stop.

- Questioned whether CBL was aware of the high degree of dissatisfaction with their services. Thought CBL would have carried out a survey of their customers before submitting the application to URCA.
- Wanted to know how CBL could provide service in Inagua but could not provide service in South Long Island Not prepared to pay for a price increase based on CBL's poor QoS and would wish to be able to choose other packages than those currently offered. Stated that some persons in Long Island only subscribe to CBL so they can watch ZNS-TV but have satellite as their main TV.
- Hoping that entire Long Isl. would be covered by cable TV. Long Island has aggressive people who have money.

Wanted to know what Long Isl. had done to CBL and the Government as Long Islanders were told that cable TV was on the poles but nothing has happened yet. Long Islanders have to fight hard to get what they need as they are part of The Bahamas. Most people in Long Isl. are self-employed and want a service that they can pay for. They have to wait 6 weeks for a technician to come from Nassau. Do not feel that they should be forced to pay for channels

4th Town Meeting – Grand Bahama (Freeport) on 1 October 2012

Key concerns and comments raised by consumers at town meeting held on 1 October 2012 at Christ the King Anglican Church Hall were as follows:

- TV signals freeze. USO Basic TV should be available in Grand Bahama.
- URCA should be an advocate for the underprivileged.
- CBL is one of a network of companies and is buying content from itself.
- CBL has not lost any money since starting up in 1997 [presumably in Grand Bahama] but built its network and recouped its investment from Bahamians while consistently making profits over the years.
- CBL is not providing service to 90% of people as they claim that they are. Was concerned that Bahamas Government is the largest shareholder in CBL but is not making an issue over the price increase application.
- Stated that buyback by CBL of its shares 2010 was done in order to allow Government to sell shares in BTC.
- Claimed that it was a lie for CBL to say that it has not had a price increase since 1995 as they now charge \$5.95 per month in order for subscribers to receive programming to all television sets in their houses and contended that 5 set-top boxes in a subscriber's house should be considered to be 5 customers.
- Complained about Spanish channels and questioned whether CBL was paying HBO and others for premium channels.
- Contended that CBL's profits do not involve the profits of its other companies.

- Stated that persons seeking to provide a competing service would be hard-pressed to get content due to CBL already being in the market and that
- CBL's SuperBasic does not contain anything that anyone wants to pay for. CBL should provide something other than the USO package by offering a smaller package for a smaller price of Bahamian channels if subscribers want them.
- CBL should declare what are the network costs them to operate as there are too many unanswered questions about the application.
- CBL can deny access to their digital backbone to persons who want to use their network to provide competing services.
- Under their original agreement with the Government, CBL has failed to provide TV/Internet services to Government buildings, churches, schools, etc.
- Individuals should be given free or greatly reduced access to the Internet. Cable Cares has contributed taken advantage of the illiteracy of Bahamians and has contributed little to The Bahamas.
- CBL seems to be bulking up its acquisition of spectrum in The Bahamas for possible mobile purposes.
- While the price increase might be necessary, it must be made subject to conditions due to the geography of The Bahamas and wants to see the true comparisons between CBL and the Caribbean countries that it used for its benchmarks.
- Complained about QoS issues due to periodic blackouts and freezing of channels.
- Complained about CBL's billing system whereby bills are generated in and sent from Nassau, sometimes resulting in 2 bills arriving at the same time.
- Contended that CBL needs a set billing cycle determined by URCA and that CBL's \$40 reconnection fee was illegal and excessive.
- Stated that as affordable package should be in the \$5-\$10 range.
- Queried what was URCA's mission and whether URCA had failed its mission.
- Questioned whether URCA would take the lead role in a class action lawsuit to recover excessive from BTC and CBL.
- Contended that Randol Dorsett's appointment as Chairperson of URCA was a conflict of interest situation as he represents CBL. CBL should not be allowed to the price increase.
- CBL stated at a town meeting in Grand Bahama some years ago that if they were allowed to get into voice, they would give up their monopoly in cable TV. Before CBL came on the scene, Grand Bahama had cable TV plus multiple dwelling units had private cable TV, giving Grand Bahama something that nowhere else in The Bahamas had.

- Cited a number of technical reasons against the proposed price increase. Said CBL was supposed to provide service to 93% of The Bahamas and theoretically they accomplished that by covering 85% in Nassau alone.
- CBL originally built head-ends in the Family Islands and used satellite dishes. Fibre links were made to a few islands and CBL shut down the head-ends in some islands. CBL now uses a single head-end that it uses to distribute its signal to all islands.
- Unfair for CBL to have tied Internet to cable TV.
- CBL took more than 2 weeks to restore service in Grand Bahama following Hurricane Katrina.
- CBL's USO Basic Service needs to consist of ZNS-TV, Parliamentary Channel, CBS/Fox/NBC/ABC in Florida, the Weather Channel and CNN, as this ensures that Grand Bahamians get accurate information about hurricanes.
- Stated that a number of persons in Grand Bahama have broadcasting licences and that ZNS-TV should provide an over-the-air service so that people can be aware of what is happening in The Bahamas.
- When CBL's services were down during Hurricane Katrina, Grand Bahamians had no knowledge of what was going on.
- Contended that CBL provides services into The Bahamas through a fibre link that continues into the Caribbean and consequently some of its costs included in the price increase application might be allocated for these other services.
- Regarding CBL's digital set-top boxes, contended that CBL upgraded to digital then converts the signal back to analogue and commented that subscribers should have been provided with both digital and analogue service for 18 months before the service was completely switched over to digital only.
- BTC is guilty of dropped calls.
- BTC racking up profits from errors, dead end voice mails, dead end texts, and dropped calls. High speed broadband is a right and not a privilege.

Exuma (24 September 2012)

Exuma has the 6-channel package in most areas and SuperBasic in the George Town area.

Exuma has problems with Quality of Service.

George Town receives less SuperBasic channels than Nassau.

Exumians are prepared to accept a price increase provided there is an increase from 6 channels to a full lineup.

The 6-channel package originally included Cable 12 but now has the Parliamentary Channel instead.

Exumians want JCN-TV in the 6-channel package instead of the Parliamentary Channel.

Exumians want cable Internet extended to the island along with SuperBasic service.

Mr. Danny Strachan, a mainstay in regatta sailing with strong family and other ties to Exuma made the following comments:

- URCA should have had a town hall meeting as Exumians will not call in to the BREEZE-FM radio station while they are working.
- The local Family Island Administrator should have been notified of URCA's meeting as local government exists in that community and URCA could have tapped into their meeting.
- Exumians have not heard from CBL as to what their customers will get from the proposed price increase.
- Exumians were dissatisfied with the disparity in the number of channels available in Exuma versus the number available in Nassau.

Strachan said he wrote to CBL 18 months for additional channels in Exuma but got no reply. He said CBL has 1 technician on the island but CBL had no one in Exuma for customers to complain to. Strachan said CBL is profitable and that Family Islanders are discriminated against by CBL.