



The Utilities Regulation and Competition Authority Alternative Dispute Resolution (ADR) Guidelines

Consultation Document

ECS 02/2014

Issue Date: March 24, 2014

Response Date: May 2, 2014

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1. Introduction

The Utilities Regulation and Competition Authority (URCA)¹ is the independent regulator and competition authority for the electronic communications sector (ECS) in The Bahamas with powers under the Communications Act, 2009 (Comms Act) to, *inter alia*, issue regulatory and other measures for the purpose of carrying into effect the electronic communications policy objectives. This consultation document is issued pursuant to section 11 of the Comms Act and comprises the proposed schemes to be implemented for the resolution of disputes between consumers and licensees and between licensees in relation to the requirements under section 15 of the Comms Act.

Liberalisation in the ECS, consequential to the establishment of the new regulatory regime in The Bahamas in September 2009, has resulted in increased competition within the sector. It is widely recognised that an essential requirement for the progression of a liberalised, competitive communications sector is a well-structured, robust and transparent set of procedures for the timely and effective resolution of disputes between consumers and licensees and between licensees. With liberalisation, the increase in the number of new licensees providing a wider range of electronic communications services to consumers will impact the level and scope of disputes in the sector, both between consumers and licensees and between licensees. As such, URCA proposes under this consultation process to develop Alternative Dispute Resolution Guidelines (“ADR Guidelines”) which set out the schemes and procedures for the fair, transparent and appropriate resolution of such disputes.

The alternative dispute resolution (ADR) schemes proposed under this consultation process endeavour to fulfil URCA’s statutory mandate in accordance with the Comms Act to establish one or more ADR schemes for resolving disputes between consumers and licensees and between licensees. The proposed ADR schemes will include, *inter alia*, procedures for mediation, arbitration and regulatory measures. It is URCA’s intent that the outcome of any of the procedures established under the proposed ADR schemes will be binding on the parties to a dispute.

The schemes contained in the ADR Guidelines will specifically address disputes escalated to URCA consequential to unresolved consumer complaints, as well as disputes between licensees submitted to URCA by such licensees. In line with URCA’s statutory mandate, URCA will implement the ADR schemes and procedures which are designed to comply with the legislation while at the same time provide a simple, timely and cost effective process for the affected parties.

URCA therefore encourages full participation in this consultation process by all stakeholders and interested parties.

¹ Established under section 3 of the Utilities Regulation and Competition Authority Act, 2009

1.1 Background

Since the establishment of the new regulatory regime for the ECS on September 1, 2009, URCA has resolved disputes between consumers and licensees and non-competition disputes² between licensees in an ad hoc manner, without formal procedures for affected parties to follow (that is, applications, submission of information, clear timelines for resolution of disputes, etc., have varied from case-to-case). The Comms Act, however, mandates that URCA establish one or more ADR schemes to resolve disputes between consumers and licensees and between licensees.

URCA has indicated in its Draft Annual Plan its commitment to commencing the process to implement ADR schemes for the resolution of disputes between consumers and licensees and between licensees³. Having delayed this project in the past due to other urgent, competing priorities, URCA believes that the implementation of such ADR schemes now require priority action. As such, URCA's engagement with the relevant industry stakeholders under this consultation process will culminate in the implementation of ADR Guidelines to inform consumers and licensees on the ADR schemes that URCA proposes to implement and the procedures it intends to adopt when resolving such disputes.

With specific regard to resolving disputes between consumers and licensees, URCA's Consumer Complaints Handling Procedures consultation document⁴ signalled URCA's intent to develop internal processes for resolving outstanding consumer complaints referred to it under the Licensee's Consumer Complaints Handling Procedures. Under that consultation document, URCA listed broad areas of emphasis it expected to include in the consultation process for developing procedures for resolving disputes between consumers and licensees. This consultation process therefore furthers URCA's stated intent through the development of ADR Guidelines that set out the schemes and procedures for the effective resolution of disputes between consumers and licensees by URCA, consequential to unresolved consumer complaints.

While disputes between licensees have, in most cases, attracted the exercise of URCA's competition powers under the Comms Act and have been investigated in accordance with the URCA Competition Guidelines⁵, there are circumstances where licensee disputes will allege a general breach of licence conditions, agreements between licensees or regulatory measures. In such circumstances, URCA requires formal procedures and processes, in accordance with the Comms Act, in order to effectively resolve such inter-licensee disputes.

² Competition disputes between licensees have been handled by URCA under the compendium of Competition Guidelines published by URCA between September 2009 and March 2010.

³ See URCA's 2014 Draft Annual Plan @ p.19

⁴ Guidelines for Developing Licensee Consumer complaints Handling Procedures, Consultation Document – ECS 23/2011, issued December 23, 2011. See particularly p. 17 of the consultation document.

⁵ ECS COMP. 1 – 9.

URCA recognises that despite the best efforts of parties to a dispute to resolve a matter, there will be cases where such parties may not reach an amicable resolution. It is therefore URCA's intention that the schemes and procedures under the proposed ADR Guidelines provide parties to a dispute a further opportunity to reach a satisfactory settlement amongst themselves. Where this fails, URCA's proposed schemes and procedures under the ADR Guidelines endeavour to ensure that disputes are received, managed and resolved in an effective and efficient manner at each stage of the process.

1.2 Objectives of this Consultation

URCA is seeking views from members of the public, licensees and interested parties in relation to establishing ADR Guidelines that set out the schemes and procedures for resolving disputes between consumers and licensees and between licensees that are referred to URCA. The ADR Guidelines aim to provide practical guidance for the step by step handling of such disputes by URCA and should also inform the parties to a dispute of the level of response and action to be expected from URCA in the ADR process.

In this consultation process, URCA is focused on establishing schemes and procedures that are objective, fair, timely, transparent, equally applied and suitable to the relevant dispute so that parties to a dispute can be confident that their dispute will be effectively and efficiently resolved by URCA. This consultation therefore has the following as its core objectives:

- (i) to achieve the policy objectives of the Comms Act to further the interest of consumers;
- (ii) to fulfil URCA's statutory mandate to establish ADR schemes to resolve disputes between consumers and licensees and between licensees; and
- (iii) to ensure that parties to a dispute have access to an independent, fair and effective ADR mechanism.

1.3 Structure of the Document

The remainder of this consultation document is structured as follows:

- Section 1: Continues by outlining, *inter alia*, how persons may respond to and participate in this consultation process;
- Section 2: Outlines the legal basis and framework under which URCA is conducting this consultation process;
- Section 3: Provides a proposed working definition for the term "Dispute";
- Section 4: Explains the status and effect of the proposed ADR Guidelines;
- Section 5: Explains the scope of the proposed ADR Guidelines;

- Section 6: Broadly describes the ADR schemes URCA proposes to implement for resolving disputes between consumers and licensees and between licensees;
- Section 7: Sets out the general procedures URCA proposes to follow in respect of the schemes for resolving disputes between consumers and licensees and between licensees;
- Section 8: Sets out the sets out the procedures URCA proposes to follow in respect of the ADR scheme for resolving disputes between consumers and licensees;
- Section 9: Sets out the procedures URCA proposes to follow in respect of the ADR scheme for resolving disputes between licensees;
- Section 10: Details the process for referral of inter-licensee disputes to a Dispute Resolution Panel and the treatment of such disputes by the Panel;
- Section 11: Describes URCA's "Next Steps" in the consultation process;
- Annex A: Contains the various proposed ADR Guidelines Forms;
- Annex B: Contains the Draft Mediation Rules proposed under the ADR Guidelines; and
- Annex C: Summarises the questions raised under this consultation document;

1.4 Responding to this Consultation

URCA invites written comments and submissions from members of the public, licensees and interested parties on the issues raised in this consultation document. Comments and submissions can be shared on any aspect of this consultation document, and in so far as it is possible, each section has been numbered to facilitate easy reference. Persons may deliver their written comments or submissions to URCA's Director of Policy and Regulation either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau, Bahamas; or
- by mail, to P. O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242)-393-0237; or
- by email, to info@urcabahamas.bs.

All comments and submissions to this consultation document should be **submitted on or before May 2, 2014**. URCA will acknowledge receipt of all responses.

URCA's preferred format for written responses is as follows:

- Respondent's name;
- Name of organisation (or state whether respondent is a consumer);

- Email address or other address of respondent;
- Response to Question 1;
- Response to Question 2, etc.; and
- Any other matters that you believe URCA should consider under the instant Consultation process.

The questions asked in this consultation document have also been listed at Annex C for ease of reference. Full explanation to the answers submitted or views held by respondents on any of the issues raised or proposals made in this Consultation would also be helpful.

1.5 Confidentiality

URCA believes that, as a matter of transparency and good regulatory practice, it is important for the public and interested parties to this Consultation process to have sight of the views and positions expressed by all respondents. As such, as soon as reasonably practicable after the close of the response date for this Consultation, URCA intends to publish all responses on the URCA website.

However, URCA may treat as confidential responses that are clearly marked (in part or full) as “Confidential”. Explanations should be provided to justify any information that is submitted on a confidential basis. In such circumstances, a redacted version should also be submitted to URCA. URCA has the sole discretion to determine whether to publish any submission marked “Confidential”.

1.6 Intellectual Property

Copyright and all other intellectual property that form any part of a response to this Consultation will be assumed to be licensed to URCA for its use during this Consultation process.

1.7 Interpretation

Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Consultation document and otherwise words and expressions shall have the same meaning assigned to them under Comms Act, and otherwise the Interpretation and General Clauses Act, Chapter 2.⁶

2. Legal Framework

URCA’s ADR role is a regulatory function which must be exercised consistently with URCA’s

⁶ Statute Laws of The Bahamas

statutory duties and obligations as the regulator for the ECS. As such, this section of the consultation document sets out in detail the legislative provisions under which URCA proposes to establish and implement the ADR schemes and procedures under the proposed ADR Guidelines.

The Comms Act establishes the law applicable to the ECS and empowers URCA, as the regulator for the ECS, with implementing the Electronic Communications Sector Policy. Under section 4 of the Comms Act, the electronic communications policy has as part of its objectives:

- “to further the interest of consumers by promoting competition and in particular –*
- (i) to enhance 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; and*
 - (iii) to encourage, promote and enforce sustainable competition...”*

Under section 8 of the Comms Act, URCA has powers to give effect to the electronic communications policy objectives. Section 8(1) provides, inter alia:

- “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”.*

Under section 15(1) of the Comms Act, *“URCA shall ... establish one or more alternative dispute resolution (ADR) schemes for disputes between licensees and between licensees and consumers or approve a scheme or schemes proposed by licensee...”*

Under section 15(2) of the Comms Act, in establishing alternative dispute resolution schemes, URCA shall request and take into account proposals from licensees.

Under section 15(3) of the Comms Act, ADR Schemes may consist of the following:

- (a) mediation, whether conducted by URCA, persons appointed by URCA or persons appointed by the parties to a dispute or a third party;*
- (b) arbitration of specific identified matters having limited scope by an expert appointed by URCA or the parties or a third party; or*
- (c) such other methods of ADR as URCA may determine.*

An ADR scheme established under section 15(3)(b) of the Comms Act (i.e. arbitration of specific identified matters) may provide for binding decisions, including interim and conservatory measures.

Under section 15(7) of the Comms Act, any ADR scheme established by URCA shall not prejudice any rights under any other provision of the Comms Act or any other law.

The cumulative effect of the foregoing provides the legislative framework by which URCA may ensure its statutory mandate to establish ADR schemes and the relevant procedures to resolve disputes between consumers and licensees and between licensees is realized and be able to take the appropriate regulatory action to resolve such disputes where efforts between the parties to satisfactorily and amicably resolve their disputes are not successful.

3. Defining what is a “Dispute”

URCA proposes to introduce a working definition for the term “Dispute”. URCA is of the view that in order to properly establish the ambit of the ADR Guidelines, a clear and concise definition of “Dispute” is essential.

It is expected that parties to a dispute will have differing positions on which transactions between themselves may be considered a dispute. URCA believes that a common definition for the term “Dispute” brings a greater level of certainty when determining the full nature and scope of the transactions between the parties to which the schemes and procedures set out under the ADR Guidelines should apply. URCA therefore proposes the following working definition that it believes can be applied across the sector:

Dispute means: *“any unresolved complaint or matter in contention between a consumer and a licensee **or** between two or more licensees where one or both parties is aggrieved by the decision or conduct of the other and the parties have failed to reach an amicable resolution after good faith effort has been made to resolve the complaint or matter in contention”.*

URCA is of the opinion that the proposed definition should lessen potential uncertainty for the parties to a Dispute as it may not always be apparent whether a matter is, in fact, a Dispute.

Question 1: Do you agree that a definition for the term “Dispute” is necessary? If so, do you believe that the proposed working definition is adequate? Should you disagree with the adequacy of the proposed definition, kindly give a detailed explanation for your views and suggest an alternative.

4. Status and Effect of the Proposed ADR Guidelines

The ADR Guidelines set out the proposed form and manner in which dispute referrals should be made and the approach URCA proposes to take when resolving any Dispute it accepts, taking into account that each Dispute will be assessed on its merits.

Notwithstanding anything contained in the proposed ADR Guidelines, nothing therein would operate so as to limit or exclude any legal rights or remedies of any person to which they apply. Particularly, nothing would derogate from or substitute for any right or remedy such person may have under the Comms Act or any other law.

URCA proposes that the ADR Guidelines be reviewed and amended periodically as appropriate in light of further industry experiences, developing law and best practice, and any changes to URCA's powers and responsibilities. Although the proposed ADR Guidelines will set out the schemes and approach URCA expects to take, it will not have binding effect on URCA to the extent that it fetters URCA's discretion in advance. Should URCA decide to depart from the ADR Guidelines in warranted circumstances, it proposes to give full reasons for doing so.

URCA proposes that the ADR Guidelines will take effect immediately upon publication to the URCA website of URCA's Statement of Results and Final Decision (with accompanying ADR Guidelines) consequential to this Consultation process.

Question 2: Do you agree with the general status and effect of the proposed ADR Guidelines? Should you disagree, kindly give a detailed explanation for your views.

5. Scope of the Proposed ADR Guidelines

Broadly, the proposed ADR Guidelines explain how URCA intends to receive and resolve disputes referred to it. The proposed ADR Guidelines therefore set out the following:

- (i) the form and manner in which a Dispute should be referred to URCA;
- (ii) the information/evidence URCA requires in order to determine whether there are grounds for URCA to exercise its statutory powers to resolve a Dispute;
- (iii) the information URCA expects parties to a Dispute to submit to URCA during the course of the ADR process to enable URCA to properly determine the issues under Dispute;
- (iv) the procedure URCA intends to adopt when resolving a Dispute;
- (v) timelines parties to a Dispute can expect URCA to take when resolving a Dispute; and
- (vi) the regulatory or other measures available to URCA consequential to determining a Dispute.

URCA recognizes that the ADR schemes and procedures in this consultation document constitute only one approach to how it deals with issues raised by the industry. The proposed ADR Guidelines will not cover URCA's regulatory intervention in respect of complaints, which are the subject of separate Guidelines. URCA therefore proposes that these ADR Guidelines will not provide for the following:

- (i) disputes/complaints regarding broadcast content, which are covered by ECS 06/2012 “*Content Regulation: Code of Practice for Content Regulation*”⁷; and
- (ii) complaints regarding breach of the competition provisions of the Comms Act or licence conditions⁸, which are covered by *ECS COMP. 1 through 9*.

A complaint submitted to URCA will be subject to URCA’s general investigative powers under the Comms Act and resolved in a manner that is appropriate either under the Comms Act or any other procedure established by URCA.

Question 3: Do you agree with the scope of the proposed ADR Guidelines? Should you disagree, kindly give a detailed explanation for your views.

6. ADR Schemes

This section of the consultation document broadly describes the ADR schemes URCA proposes to implement for resolving disputes between consumers and licensees and between licensees.

6.1 ADR Scheme for Disputes Between Consumers and Licensees

In furthering the interests of consumers, URCA proposes to establish an ADR scheme for resolving disputes between consumers and licensees that gives consumers access to justice where recourse to the court system may be impossible or impractical due to cost and resource constraints. URCA considers ADR as an important way to redress the power imbalance between consumers and licensees who have greater resources, knowledge and control over the products and services which may be in dispute. URCA therefore proposes an ADR scheme for resolving disputes between consumers and licensees that allows for mediation in certain matters and, where necessary, for URCA to take the appropriate regulatory measures in exercise of its powers under the Comms Act to effectively resolve such disputes.

The proposed mediation process under the ADR scheme for resolving disputes between consumers and licensees aims to improve the outcome for those consumers who would otherwise fail to pursue Disputes because of frustration with the licensee’s decision or decision making process. URCA also believes that the mediation process can result in a speedy and amicable resolution to disputes between consumers and licensees and at the same time preserve the relationship between the parties where a consensual agreement is reached.

Where the mediation process pursued does not result in a satisfactory resolution of the issues between the parties, URCA proposes, under the ADR scheme for resolving disputes

⁷ See particularly section 10 of the Content Code.

⁸ See particularly ECS COMP. 9.

between consumers and licensees, to exercise its powers under the Comms Act to take the appropriate regulatory measures to effectively resolve such disputes. The appropriate regulatory measures may include, but may not be limited to, issuing a determination, order, direction, statement, instruction or notification.

6.2 ADR Scheme for Disputes Between Licensees

URCA recognizes that prolonged unresolved disputes between licensees can have an adverse impact on consumers and the ECS as a whole. The proposed ADR scheme for resolving disputes between licensees also allows for mediation in certain matters. URCA has proposed Mediation Rules to govern the mediation process for resolving disputes between licensees.

URCA has also proposed an arbitration process under the scheme for resolving disputes between licensees where such disputes have been referred to URCA for arbitration by the parties or following a detailed analysis of all submissions by the parties to a Dispute. In this regard, URCA proposes referral of such Disputes to a Dispute Resolution Panel.

The ADR scheme for resolving disputes between licensees also allows URCA, where necessary, to take the appropriate regulatory and other measures in exercise of its powers under the Comms Act to effectively resolve such disputes.

7. General Procedures Under the ADR Schemes

This section of the consultation document sets out the general procedures URCA proposes to follow in respect of the schemes for resolving disputes between consumers and licensees and between licensees.

7.1 High Level Principles

All regulatory and other measures taken by URCA in resolving disputes between consumers and licensees and between licensees shall be proportionate to their purpose and issued in a manner that is transparent, fair and non-discriminatory⁹. As such, URCA proposes to adhere to the high level principles of transparency, fairness, proportionality, accountability and natural justice when establishing and implementing the ADR schemes and resolving disputes under the proposed ADR Guidelines.

In order to comply with the requirements at law relating to transparency, URCA proposes to:

- (i) publish the scope or summary of any dispute on its website (having regard to any commercially sensitive information);
- (ii) publish the outcome of the resolution of a Dispute; and

⁹ In accordance with section 8 of the Utilities Regulation and Competition Act, 2009

- (iii) publish URCA's Final Decision on its website (which will provide the reasons for the decision).

It is URCA's expectation that parties to a Dispute make good faith efforts to resolve the issues in dispute before referring a Dispute to URCA. By the time a Dispute is submitted to URCA, there should have been serious efforts demonstrated by the parties to resolve the issues between themselves. URCA therefore proposes not to allow its ADR schemes and procedures to be used as a replacement of commercial negotiations between the parties.

7.2 Application of the ADR Guidelines

URCA's ADR Guidelines are intended to apply to any dispute arising out of or in connection with any matter regulated by URCA under the Comms Act save for the exception stated in section 5 above. Every licensee that has been issued either an Individual Operating Licence or a Class Operating Licence Requiring Registration by URCA, and every person who has either elected to refer a Dispute to URCA for resolution or is a respondent to a Dispute or is an interested party to a Dispute, shall be subject to the schemes and procedures established under URCA's proposed ADR Guidelines.

7.3 Powers of URCA under the ADR Guidelines

Upon receiving a Dispute for resolution under the ADR Guidelines, URCA proposes to take one or more of the following actions that it considers appropriate:

- (i) hear and determine the Dispute within its powers under the Comms Act, including settling the issues for resolution;
- (ii) facilitate mediation of the Dispute where agreed by the parties;
- (iii) refer the Dispute to an Arbitration Panel for resolution;
- (iv) request information from or submit questions to persons affected by the Dispute;
- (v) direct the parties to commence or continue reasonable, good faith efforts to resolve the Dispute;
- (vi) decline to determine the Dispute based on one or more of the grounds set out in section 6.8 of the ADR Guidelines;
- (vii) act as mediator of a Dispute; and
- (viii) take such other course of action as it considers necessary to resolve the Dispute.

URCA also proposes to require proof by affidavit or otherwise of any written information, facts or details and any copies or extracts under the ADR Guidelines, as it thinks necessary to resolve the Dispute.

URCA proposes to make such inferences and draw such conclusions as it considers necessary from the failure by any person or party to a Dispute to comply with any direction made by URCA to resolve a Dispute.

7.4 Timescales

URCA has proposed various timescales in the procedures set out under the ADR Guidelines. URCA views its timely resolution of disputes as a form of performance indicator. However, URCA reserves the right to extend the proposed timescales where it considers it appropriate on a case-by-case basis having regard to any representations which are made to it by the parties to a Dispute. Where URCA decides to extend the timescales, it proposes to resolve the Dispute as soon as reasonably practicable after the timeframe has elapsed.

Where the ADR Guidelines propose a timescale for doing a required act or taking any action or any step in the ADR process, URCA proposes that the affected party take such action or step by 4:30 p.m. on that day, unless URCA determines otherwise.

Subject to the foregoing, URCA proposes to resolve disputes referred to it under the ADR Guidelines within a maximum of three (3) months for disputes between consumers and licensees and within a maximum of six (6) months for inter-licensee disputes¹⁰. URCA proposes that the proposed timeframes should commence from the date it is duly notified of a Dispute and has received all information in support of the Dispute. Where URCA requests further information from a party, the time will pause and restart upon URCA receiving the requested information.

In order to comply with the targeted timescales for resolving a Dispute, parties to a Dispute will be expected to fully co-operate with URCA in achieving resolution of disputes within the proposed timescales. Where a party to a Dispute fails to provide information or a response within a requested timeframe, URCA proposes to take the appropriate regulatory or other measure to resolve a Dispute on the basis of the information before URCA at the given time.

7.5 Extension of Time

Notwithstanding the provisions of section 7.4 above, URCA proposes that, on the application of a party to a Dispute or by its own motion, and if URCA determines it necessary to a fair resolution and in the best interest of the public, to extend the time limit for the resolution of a Dispute.

Where URCA decides to extend the time limit for the resolution of a Dispute, it proposes to set out:

- (i) the reasons for extending any time limit, as well as the new time limit;
- (ii) the actions to be taken during any extended time limit so as to encourage efficiency;

¹⁰ URCA is aware that there are usually certain complex issues inherent to inter-licensee disputes to justify a period for resolution that is greater than that for disputes between consumers and licensees. However, inter-licensee disputes referred to the Dispute Resolution Panel will be subject to appropriate timeframes as determined by the panel.

- (iii) the steps to be taken where an agreement is not reached between the parties within the extended time limit by means of an alternative mechanism in the ADR process.

Question 4: Do you believe that the ADR Guidelines should have clear timeframes? Do you agree with the proposed timelines for the resolution of disputes? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.

7.6 Notice of Dispute

In order to be able to act on a Dispute, URCA must firstly be made aware of the Dispute for resolution under the ADR Guidelines. URCA therefore proposes that the party requesting dispute resolution (Applicant) should complete and submit the relevant Notice of Dispute Form (draft copy found in Annex A herein). The Notice of Dispute forms have been developed to assist an Applicant in filing a Dispute and to minimize delays in the ADR process consequential to the omission of information needed to resolve the Dispute.

7.7 Binding Effect of Submissions

URCA believes that for disputes to be resolved in a timely and effective manner, all submissions by parties to a Dispute should be binding in nature and raise all relevant issues to be resolved at the initial stage of submission of a Dispute. As such, URCA proposes that any party which makes a submission should, in the initial submission, submit such information and documents as are necessary to support such Dispute.

Except as provided under the ADR Guidelines, URCA proposes not to accept any subsequent submission made a party to a Dispute during the ADR proceedings which:

- (i) raises any new issue not previously disclosed in the initial submission; or
- (ii) contains information which should have been submitted in the initial submission; or
- (iii) takes any position that is inconsistent with the party's initial submission.

7.8 Declining or Dismissal of Dispute

URCA has a statutory mandate under the Comms Act to carry out its functions and exercise its powers in a manner that makes best use of the economic and other resources available to it.¹¹ URCA has limited resources and must carefully decide whether a matter referred to it is, in fact, a Dispute and therefore appropriately resolved under the ADR Guidelines.

URCA therefore proposes to decline or dismiss any Dispute referred to it where after an assessment of the information, submitted in support thereof, demonstrates that:

¹¹ See section 8(2) of the URCA Act, 2009.

- (i) the matter is a complaint not subject to or appropriately resolved under the ADR schemes contained in the ADR Guidelines;
- (ii) the Dispute is not within the regulatory jurisdiction of URCA;
- (iii) the Applicant has not made reasonable efforts to resolve the Dispute with the Respondent;
- (iv) the Dispute is trivial, vexatious¹² misconceived or an abuse of process;
- (v) the issue(s) for resolution is the subject of current litigation between the same parties;
- (vi) the Dispute does not raise any issue under the Comms Act, licence condition or obligation of the parties;
- (vii) the Dispute is presented otherwise than in accordance with the ADR Guidelines or directions from URCA; or
- (viii) the Dispute is not in the public interest for URCA to determine.

URCA, however, proposes not to reject a Dispute for defects in the information or its presentation without giving an opportunity to the Applicant to rectify the defects within such time as it may give for that particular purpose.

Where URCA rejects an application for Dispute resolution under its ADR Guidelines, it proposes to notify the Applicant in writing, giving reasons for such rejection.

Question 5: Do you agree with the basis on which URCA proposes to decline or dismiss a dispute? Kindly give a detailed explanation for your views.

7.9 Withdrawal of Dispute

URCA believes that an Applicant to a Dispute should be able to withdraw a Dispute submitted to URCA for resolution as of right, but not in a manner that may be prejudicial to the Respondent. URCA proposes that the Applicant may, at any time before URCA issues the appropriate regulatory measure to resolve a Dispute, withdraw the Dispute by notice in writing to URCA. Where a Dispute is withdrawn, URCA may make orders within its powers under the Comms Act as it deems appropriate. Such orders may include, but is not limited to, costs.

Question 6: Kindly provide your views on URCA's proposal to allow an Applicant to withdraw a dispute at any time before a regulatory or other measure is issued.

¹² URCA believes that a "*frivolous and vexatious*" dispute is a very narrow category where it is readily apparent that the complainant is pursuing a dispute that is without merit and made with the intention of harassing or creating unnecessary burden for the other party.

7.10 Determination of Dispute

URCA proposes to take the appropriate regulatory and other measures in exercise of its powers under the Comms Act to effectively resolve a Dispute which may include, but is not limited to, issuing a determination, order, direction, statement, instruction or notification. In resolving a Dispute, URCA proposes to act expeditiously and in doing so proposes to consider:

- (i) the subject matter of a Dispute;
- (ii) the need to preserve any agreements between the parties over issues that are not in Dispute;
- (iii) the need to inquire into and investigate a Dispute;
- (iv) the representations made by the parties and interested persons to a Dispute;
- (v) URCA's powers and functions within the context of the objectives of the Comms Act; and
- (vi) all matters affecting the merits and fair settlement of a Dispute.

A decision by URCA in resolving a Dispute will be issued in writing and state the reasons for URCA's decision on any issue raised in the Dispute. A decision issued by URCA shall bind the parties to a Dispute.

Any Order issued by URCA under the ADR process for resolving a Dispute, may include, but is not limited to, the following:

- (i) an Order to remedy, prevent or rectify a breach, anticipated breach or conduct which gave rise to the dispute;
- (ii) an Order to pay compensation;
- (iii) an Order to pay a fine; and
- (iv) an Order to pay costs.

An Order issued by URCA consequential to resolving a Dispute may be enforced in the same manner as an Order of the court¹³.

7.11 Oral Hearing

Under the proposed ADR Guidelines, URCA intends to determine a Dispute mainly by reference to the information and documents filed by the parties to a Dispute. However, URCA may elect to conduct an oral hearing to aid it in determining a Dispute between licensees either on its own initiative or on application of one or more parties to the Dispute. Where URCA decides to conduct an oral hearing, it proposes to adopt the following general procedures:

¹³ As provided under section 95(3) of the Comms Act.

- (i) to notify the parties in writing a minimum of ten (10) business days prior to the date of the hearing advising them of the time, location and purpose of the oral hearing;
- (ii) to hold an oral hearing as soon as reasonably practicable but no later than thirty (30) business days after the parties have submitted all the relevant information and documents required or requested by URCA to resolve the Dispute; and
- (iii) to determine the procedure for the oral hearing as it considers appropriate in accordance with the high level principles as described in section 7.1 of the proposed ADR Guidelines. The rules governing the admissibility of evidence in judicial proceedings will not bind URCA when it is conducting an oral hearing.

URCA proposes to stipulate those matters or issues under dispute as identified by URCA as requiring oral submissions. URCA's stipulation will also include the location, date and times of hearing, time limits for the parties, whether the parties may appear in person or through a representative to attend and make oral submissions to URCA. Where necessary, URCA may conduct the oral hearing through the use of telephone conference, video-conference or both.

Question 7: Do you believe that URCA should use oral hearings as part of its approach to determining a dispute between licensees? If not, provide a full explanation for your position.

7.12 Reconsideration of URCA's Decision

URCA believes that reconsideration of a regulatory or other measure it takes to effectively resolve a Dispute may be tantamount to URCA conducting a review of its decision and that it is not the competent body to conduct such reconsideration.

URCA recognizes, however, that there may be circumstances where it issues a regulatory or other measure (e.g. determination, instruction or direction) which may require correction of errors that may, *inter alia*, be prejudicial to a party to a Dispute if not corrected. In such circumstances, URCA proposes to reconsider such regulatory or other measure to the extent of making the necessary corrections and or amendments.

Where there is a clerical, computational or typographical error or any other error of similar nature contained in such regulatory or other measure, URCA proposes to reconsider the regulatory or other measure either:

- (i) on its own motion, within ten (10) calendar days of the date of issuance of the regulatory measure; or
- (ii) on application to URCA by a party to a Dispute within ten (10) calendar days of the date of issuance of the regulatory or other measure. In such circumstances, URCA proposes to notify the other party to the Dispute of the application for

correction of the regulatory or other measure and allow such party a period not exceeding five (5) calendar days to submit comments to such application or the issue to which the application relates.

Where URCA decides to correct the regulatory or other measure as provided above, URCA proposes that it shall issue its correction no later than fourteen (14) calendar days of the expiration of the period of time for the receipt of any comments from the other party or within such other period as URCA may decide. Such correction of the regulatory or other measure will take the form of a corrigendum and shall constitute part of the regulatory or other measure issued by URCA.

Notwithstanding the foregoing, where after URCA has issued a regulatory or other measure in a Dispute, and a party to the Dispute:

- (i) has new evidence which:
 - (a) is substantial and material to the Dispute; and
 - (b) did not exist at the time of the issuance of the regulatory or other measure or did exist at that time but was not discovered and could not have been discovered through the exercise of reasonable diligence; or
- (ii) wishes to expand or amend the scope of the Dispute originally submitted to URCA,

URCA proposes to reconsider its regulatory or other measure where necessary and **may** treat with these circumstances under a new Dispute.

Question 8: Do you agree with URCA regarding reconsideration of its regulatory measure? If you disagree, kindly provide your views on URCA's regulatory measure being reconsidered by URCA.

7.13 Remedies and Enforcement

The remedies issued by URCA consequential to resolving a Dispute between the parties will also be regulatory or other measures and therefore must be proportionate to their purpose. Under the ADR Guidelines, URCA proposes to require the parties to a Dispute to set out, in their application for dispute resolution, the remedies which they consider to be appropriate to resolve the Dispute. URCA believes that the parties to a Dispute should have a clear idea on what they intend to achieve by engaging URCA. However, as the sector regulator, URCA will not be limited to the remedies proposed by the parties and will consider on a case-by-case basis what remedy is appropriate to resolve the Dispute.

Any regulatory or other measure issued by URCA in resolving a Dispute under the ADR Guidelines will be enforceable under Part XVII of the Comms Act.

Question 9: Do you believe that URCA should require a party to a dispute to set out a desired remedy or should URCA determine what remedy is appropriate? Kindly

provide full explanation for your views.

7.14 Appeals

URCA proposes that nothing under the proposed ADR Guidelines shall preclude a party to a Dispute from appealing a decision issued by URCA to resolve the Dispute to the Utilities Appeal Tribunal (UAT) or any other competent appellate body.

7.15 Costs

URCA is of the opinion that an order to pay costs should not act to discourage parties from referring genuine disputes to it for resolution. URCA proposes to order, at its discretion, that one or more parties to a Dispute pay all costs reasonably incurred by the other party consequential to resolving a Dispute.

URCA also proposes that it may apportion costs of a Dispute between the parties where URCA determines that apportionment is appropriate, considering the circumstances and outcome of the Dispute. URCA may therefore require a party to a Dispute to pay costs to the other party to the Dispute, provided that URCA firstly considers:

- (i) the party's conduct before and after the referral of the Dispute to URCA, including in particular whether good faith effort has been made to resolve the Dispute; and
- (ii) whether the outcome is in the party's favour (either in whole or in part) in relation to the Dispute.

Question 10: Do you agree with URCA's proposal to award costs in the circumstances as described in section 7.15 above? If you disagree, kindly provide full reasoning your position.

7.16 Offers of Settlement

It is important to emphasize that URCA encourages and welcomes an amicable settlement of a Dispute to the satisfaction of the parties to a Dispute. URCA proposes that a party to a Dispute may at any stage file a written offer of settlement with URCA to resolve a Dispute or any issue arising under a Dispute. In this regard, where the Dispute is between a consumer and a licensee and the licensee makes an offer of settlement, URCA proposes to notify the consumer of such offer of settlement. Where a Dispute is between licensees, URCA proposes that the party filing such offer of settlement with URCA shall on the same date serve a copy of the offer on all parties to the Dispute, unless otherwise directed by URCA.

Unless otherwise directed by URCA, any offer of settlement must contain the terms and conditions of the offer of settlement and a clear and concise explanation of the settlement with supporting documentation as necessary.

URCA believes that placing timeframes on responses by parties to whom an offer of settlement is made is important to the timely resolution of a Dispute. URCA proposes that, where the Dispute is between a consumer and a licensee and URCA has notified the consumer of the offer of settlement, the consumer shall within five (5) business days of such notification submit comments to URCA in writing on the offer of settlement. Where the Dispute is between licensees, the party being duly served the offer of settlement may file comments on the offer of settlement with URCA within five (5) business days of receiving it. Such party filing comments on an offer of settlement shall, on the same date, serve a copy of their comments¹⁴ on all parties to the Dispute.

In disputes either between a consumer and a licensee or between licensees, where a party does not file any comments on an offer of settlement, URCA proposes to consider that party to have waived any objections to the offer of settlement.

URCA also proposes that, within five (5) business days from date of receiving comments on any offer of settlement, it will allow any party (5) business days within which to file reply comments on an offer of settlement.

In determining a Dispute where an offer of settlement has been made, URCA proposes to approve the offer of settlement on such terms and conditions as URCA considers appropriate and the offer of settlement is in whole or in part, consistent with the policy objectives of the Comms Act.

Question 11: What are your views on “Offers of Settlement” and URCA’s role and intervention in the settlement process?

7.17 Closing a Dispute

URCA believes that it is expedient for it to have the appropriate means for identifying those disputes that have been resolved or under appeal before closing a Dispute. As such, URCA proposes the following key considerations to determine whether a Dispute can reasonably be considered closed:

- (i) whether the parties to a Dispute have indicated explicitly, or it can be reasonably inferred by URCA, that they no longer wish to pursue the Dispute;
- (ii) whether the parties to a Dispute have agreed a course of action which, if taken, would resolve the Dispute to the satisfaction of the parties;
- (iii) whether the Applicant to a Dispute has withdrawn the Dispute; or
- (iv) whether a final decision has been made in the Dispute.

URCA proposes to notify the parties to a Dispute in writing of its decision to close the Dispute and the reasons for its decision.

¹⁴ Comments should be concise and clearly indicate whether the offer of settlement is accepted in whole or in part and the reasons for non-acceptance of the offer, either in whole or in part.

Question 12: Do you agree with the circumstances under which URCA proposes to close a Dispute? If not, kindly provide explanation for your position.

7.18 Confidential Information

URCA is aware that the resolution of disputes would entail the submission of information and documents that the submitting party to a Dispute may consider as confidential and request that such information/documents be treated with a high degree of confidentiality. URCA proposes that it will be useful to describe the type of information a party to a Dispute may designate as confidential and ask to be treated as such, which may include, but is not limited to:

- (i) financial, commercial, scientific or technical information the submitting party consistently treats as confidential and information that is not publically available;
- (ii) information that is subject to legal privilege;
- (iii) information that is a trade secret;
- (iv) information the submitting party reasonably expects the disclosure of could:
 - (a) result in direct harm to the party;
 - (b) cause significant financial loss or gain to any person;
 - (c) significantly prejudice the competitive position of any person; or
 - (d) affect contractual or liabilities of any person.

7.19 Treatment of Confidential Information

Save as disclosed during any hearing or in any decision, URCA proposes to treat as confidential all matters, information and documents submitted by the parties to a Dispute during or in connection with the ADR process. Documents requested to be treated as confidential should be clearly marked (in part or full) “Confidential” and the submitting party should submit to URCA a redacted version along with the confidential version. URCA therefore proposes to exercise its sole discretion to determine whether to publish any submission marked “Confidential”.

Question 13: Do you agree with how URCA proposes to treat with confidential information submitted to it in the ADR process? If not, kindly provide explanation for your position.

8. Procedures under the ADR Scheme for Disputes between Consumers and Licensees

This section of the consultation document sets out the procedures URCA proposes to follow in respect of the ADR scheme for resolving disputes between consumers and licensees.

8.1 Referral of Dispute

URCA considers that the primary responsibility for complaint resolution, in order to avert a Dispute being referred to it for resolution, must be retained by the licensees as they have the direct relationship with the consumer and are best positioned to address such matters. URCA believes that to disrupt this balance would serve to both undermine a consumer's right to seek redress from a licensee and may encourage licensees to abdicate their responsibility for effectively resolving their customer complaints to the regulator. URCA's proposed role under the ADR scheme for resolving a Dispute between consumers and licensees, therefore, will be to provide the means through which consumers can seek redress where the good faith efforts between consumers and licensees to resolve a complaint have not been successful.

As provided earlier, URCA proposes to only resolve a Dispute between a consumer and a licensee where the consumer has firstly exhausted the licensee's complaints handling process set out in its Consumer Complaints Handling Procedures (Complaints Procedures) document. However, where after exhausting the licensee's Complaints Procedures, and a consumer remains dissatisfied with the way in which the licensee has managed the unresolved complaint or is aggrieved by the licensee's decision, the matter may be referred to URCA as a Dispute for resolution.

URCA considers it important to remind stakeholders under this consultation process that each licensee that has been issued either an Individual Operating Licence (IOL) or a Class Operating Licence Requiring Registration has been required by URCA to develop and implement procedures for handling consumer complaints which must be made available directly from the licensee concerned either on their website or at its office(s). Within the Complaints Procedures, each licensee must have a defined escalation process for unresolved complaints, including referral to URCA.

URCA therefore proposes the following criteria for referral to it of disputes between consumers and licensees, subject to the licensee's internal escalation process for resolving complaints firstly being exhausted:

- (i) where a consumer is dissatisfied with the way the licensee has managed the unresolved complaint or is aggrieved by the licensee's decision;
- (ii) a Dispute may be referred to URCA either by the consumer or the licensee;
- (iii) a party to a Dispute between a consumer and licensee shall have a period not exceeding thirty (30) business days after the licensee's internal escalation process for resolving complaints has been exhausted to refer such Dispute to URCA for resolution.

Question 14: Do you agree with the criteria URCA proposes to establish for the referral to it of disputes between a consumer and licensee? If not, kindly provide explanation for your position.

8.2 Notification of Dispute and Required Information

As stated under section 7.6 above, URCA must firstly receive notice of a Dispute for resolution under the ADR Guidelines. To this end, URCA proposes that the party requesting dispute resolution (Applicant) should complete and submit a Notice of Dispute Form (URCADR-1) (draft copy found in Annex A herein). The Applicant would be requested to provide the following information at a minimum in support of a Dispute:

- (i) the name of the parties to the Dispute and contact details;
- (ii) customer account number and/or service order number;
- (iii) licensee's unique reference number (as provided when the initial complaint was made to licensee);
- (iv) nature and scope of the Dispute (as much details as possible should be provided at this stage, including supporting documents/materials – i.e. copies of correspondence between the parties, bills, contracts, relevant contact point at the office of other party to dispute, etc.);
- (v) details of efforts to resolve the Dispute (evidence should be provided of the attempts to resolve the Dispute before its referral to URCA);
- (vi) impact of the Dispute (this should cover the impact that the issue(s) in dispute has on the Applicant; and
- (vii) proposed remedy (the desired outcome by the Applicant).

All notices for dispute resolution (with accompanying documentation) should be sent to the Chief Executive Officer of URCA either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau, Bahamas; or
- by mail, to P. O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242)-393-0237; or
- by email, to info@urcabahamas.bs .

8.3 URCA's Response to Dispute Referral

URCA proposes to acknowledge receipt of every dispute referral in writing within two (2) business days of receiving the Notification of Dispute for resolution. URCA's acknowledgement of receipt of a Notification of Dispute proposes to advise on the initial course of action to be taken as part of the ADR process, which will be to conduct a review of the information in support of the Dispute.

8.4 Recording the Dispute

Once a Dispute between a consumer and licensee is received, URCA proposes to add the Dispute to an URCA ADR database and assign the Dispute a unique case reference number. URCA's acknowledgement of receipt of a Dispute will provide the unique case reference number for the Dispute. The parties will be encouraged to refer to this unique case

reference number when making follow-up inquiries about a Dispute filed with URCA for resolution.

8.5 Assessment of Dispute

There may be certain disputes between a consumer and a licensee referred to URCA that may be assessed immediately and the Applicant immediately advised of the most appropriate course of action to be taken. However, depending on the complexity of the issue(s) in dispute, URCA may need to consult internally (and possibly externally) before advising on an appropriate course of action.

URCA proposes to assign a Dispute to a particular member of staff (Case Officer) who will provide a contact for the duration of the ADR process. The Case Officer assigned the Dispute will carry out an initial assessment of the nature and scope of the Dispute, the information provided and the efforts made by the parties to resolve the matter. The initial assessment process is proposed to be completed within five (5) business days of URCA having received the Notice of Dispute. It is also proposed that the Case Officer would keep the parties informed of the progress of the Dispute, particularly where timeframes may be exceeded.

Where in the opinion of the Case Officer all avenues to resolve the Dispute have not been exhausted, the Dispute may be referred back to the parties or the Case Officer may assist directly with the parties attempting to resolve the Dispute. Where the Case Officer is of the view that further information or clarification is required, the party making a request for ADR will be asked to provide such additional information or clarification. Any request for additional information or clarification will be time bound (usually not exceeding seven (7) business days and will depend on the complexity of the information requested) for response. Where the Applicant fails or refuses to provide such additional information within the specified time, URCA may close the Dispute.

URCA therefore proposes that consequential to an initial assessment of the Dispute it shall, within ten (10) business days of having received the Notice of Dispute and all required information, notify the Applicant in writing (either by e-mail or letter) of the course of action that will be taken in the process, which may include:

- (i) directing the Applicant to commence or continue reasonable efforts to resolve the Dispute; or
- (ii) notifying the Respondent that a Dispute made against it and request initial comments.

Alternatively, where URCA decides that the Dispute is unfounded, it proposes to notify the parties in writing and provide reasons for such decision.

Question 15: Do you agree with the proposed approach by URCA to assessing a Dispute? If not, kindly explain and suggest an alternative approach.

8.6 Notification of Dispute to Respondent

Where a Dispute is referred to URCA by a consumer and it is decided that the information and documentation in support of a Dispute establishes a bona fide Dispute to be resolved by URCA, then, URCA proposes to notify the Respondent in writing of the issues under dispute between the parties. URCA also proposes to provide the Respondent with a copy of the material submitted by the Applicant (subject to any confidential requirement).

8.7 Response by Respondent to Dispute

Where a Dispute is referred to URCA by a consumer and URCA has formally notified the Respondent of the Dispute, URCA proposes to request from the Respondent comments in writing regarding the issues under Dispute. URCA proposes that the Respondent should complete and submit a Response to Dispute Form (URCADR-3) (draft copy found in Annex A herein). In this regard, URCA proposes a timeframe not exceeding five (5) business days from giving notification of a Dispute to the Respondent for comments. In exceptional circumstances, the Respondent may be required to respond in a shorter timeframe which may include, but will not be limited to, circumstances where the consumer is suffering significant harm or disadvantage pending the resolution of the Dispute.

URCA expects the comments from the Respondent to include the following information:

- (i) whether the Respondent admits or denies the issues in the Dispute;
- (ii) a response to each of the issues arising in the Dispute; and
- (iii) information and copies of any documents the Respondent intends to rely on in defending against the issues raised in Dispute.

Consequential to a review of the comments submitted to URCA by the Respondent, a request for further information or clarification may be required. URCA therefore proposes to review the Respondent's comments within three business (3) days of receipt and revert to the Respondent where necessary. Any request for additional information or clarification will be time bound (usually not exceeding five (5) business days and will depend on the complexity of the information requested) for response.

Where the Respondent either refuses or fails to respond to a request for comments or for additional information and clarification by URCA within the required timeframe, URCA proposes to take the appropriate regulatory and other measures to resolve the Dispute based on the information in its possession at that time.

8.8 Resolving the Dispute

Following a detailed analysis of all submissions by the parties to a Dispute, URCA proposes to take appropriate regulatory and other measures to resolve the Dispute which may include mediation, issuing a Determination, order, direction, statement, instruction or notification.

8.8.1 Mediation

Under the ADR scheme for disputes between the consumer and the licensee, URCA proposes a process of mediation for resolving a Dispute. The Case Officer assigned the Dispute may recommend or the parties may consider that the issues under dispute may be effectively resolved through mediation.

URCA may be able to resolve the matter by having one of its officers act as mediator between the parties to achieve a mutually acceptable solution. In this regard, URCA proposes to appoint its Corporate and Consumer Relations Manager (CCRM) as mediator who shall not be the Case Officer assigned to the Dispute. URCA proposes that the function of the CCRM as mediator will be to assist the parties to a Dispute to identify the disputed issues, develop options, consider alternatives and endeavour to reach a mutually satisfactory agreement between the consumer and the licensee. The CCRM shall not carry out a determinative role on the substantive issues under dispute, should mediation not be successful.

URCA considers it important to emphasise that while it proposes to facilitate the mediation process, it will not be responsible for making the mediation decision, only facilitating the outcome between the parties.

In the alternative to the mediation process described above and depending on the issues at hand¹⁵ between the consumer and the licensee, URCA also proposes under the mediation process of the ADR scheme for resolving disputes between the consumer and the licensee to adopt the Mediation Rules as set out in Annex B as contained herein to govern and resolve the dispute.

URCA proposes that a decision consequential to mediation will be binding on the parties.

Question 16: Do you agree with the proposed approach by URCA to facilitate mediation between a consumer and a licensee through the appointment of the CCRM as a mediator? If not, kindly explain and suggest an alternative approach.

8.8.2 Regulatory Determination

Where URCA decides to resolve a Dispute between a consumer and licensee in accordance with the procedure set out under section 99 of the Comms Act, URCA will give notice to the Respondent of URCA's Preliminary Determination:

- (i) specifying the determination to be made;
- (ii) specifying the obligations the compliance or contravention of which are the subject of the determination;

¹⁵ In this regard, URCA will consider the nature and scope of the issues under dispute, the preservation of the future relationship of the parties to a dispute and the willingness/openness of the parties to mediation.

- (iii) specifying the period (not exceeding 30 calendar days) that the Respondent may make representations about the matters in the Preliminary Determination; comply with the obligations referred to in the Preliminary Determination of which it is in contravention and remedy the consequence of the contraventions notified in the Preliminary Determination; and
- (iv) enclose a draft Order URCA intends to issue with a Final Determination, if applicable.

Depending on the representations submitted to URCA by the Respondent, URCA will within 30 calendar days after receiving such representations issue a Final Determination and Order to the Dispute. URCA proposes to communicate its Final Determination and Order to all parties to the Dispute. The Final Determination and Order will be published on the URCA website, having regard to any requests for commercial confidentiality which URCA considers to be justified. URCA's Final Determination will include, *inter alia*, clear reasons for its decision.

URCA believes it is important to re-emphasize that a Final Determination will not preclude any of the parties to the dispute from making an appeal in accordance with the Comms Act or any other relevant legislation.

9. Procedures under the ADR Scheme for Disputes between Licensees

This section of the consultation document sets out the procedures URCA proposes to follow in respect of the ADR scheme for resolving disputes between licensees. The procedures under this proposed ADR scheme will include, *inter alia*, procedures for mediation, arbitration and the issuance of the appropriate regulatory and other measures by URCA.

Disputes between licensees usually involve resolution of more complex issues and generally require a more formal ADR process than disputes between consumers and licensees. URCA believes that individual licensees must also make good faith efforts to resolve issues between them before referring a Dispute to URCA for resolution.

9.1 Referral of Dispute to URCA and Required Information

URCA proposes that a dispute between licensees may be referred to URCA for resolution either:

- (i) jointly by mutual agreement of the parties; or
- (ii) *ex parte* by one party or by more than one party jointly to a dispute.

URCA also proposes that the party requesting ADR (Applicant) should complete and submit a Notice of Dispute Form (URCADR-2) (draft copy found in Annex A herein). The Applicant should provide the following information at a minimum in support of a Dispute:

- (i) the parties to the Dispute and contact details for each;

- (ii) nature and scope of the Dispute (as much details as possible should be provided at this stage, including supporting documents/materials – i.e. copies of correspondence between the parties, agreements, contracts, etc.);
- (iii) details of efforts to resolve the Dispute (evidence should be provided of the attempts to resolve the Dispute before referral to URCA);
- (iv) impact of the Dispute (this should cover the impact that the issues in dispute has on the Applicant); and
- (v) proposed remedy (the desired outcome by the Applicant should be clearly stated).

All notices for dispute resolution (with accompanying documentation) should be sent to the Chief Executive Officer of URCA either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau, Bahamas; or
- by mail, to P. O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242)-393-0237; or
- by email, to info@urcabahamas.bs

9.2 URCA's Response to Dispute Referral

URCA proposes to acknowledge receipt of every dispute referral in writing within two (2) business days of receiving the Dispute for resolution. URCA's acknowledgement of receipt of a Dispute proposes to advise on the initial course of action to be taken as part of the ADR process, which will be to conduct a review of the information in support of the Dispute.

9.3 Recording the dispute

Once a Dispute is received, URCA proposes to add the Dispute to an URCA ADR database and assign the dispute a unique reference number. URCA's acknowledgement of receipt of a Dispute will provide the unique case reference number. The parties to the Dispute will be encouraged to refer to this unique reference number when making follow-up inquiries about a Dispute filed with URCA for resolution.

9.4 Assessment of Dispute

There may be certain disputes between licensees referred to URCA that may be assessed immediately and the Applicant immediately advised of the most appropriate course of action to be taken. However, depending on the complexity of the issue(s) in dispute, URCA may need to consult internally (and possibly externally) before advising on an appropriate course of action.

URCA proposes to assign the Dispute to a particular member of staff (Case Officer) who will provide a contact for the duration of the ADR process. The Case Officer assigned to the Dispute will carry out an initial assessment of the nature and scope of the Dispute, the

information provided and the efforts made by the parties to resolve the matter. The initial assessment process is proposed to be completed within five (5) business days of URCA having received the Notice of Dispute. It is also proposed that the Case Officer keep the parties informed of the progress of the Dispute, particularly where timeframes may be exceeded.

Where in the opinion of the Case Officer all avenues to resolve the Dispute have not been exhausted, the Dispute may be referred back to the parties or the Case Officer may assist directly with the parties attempting to resolve the Dispute. Where the Case Officer is of the view that further information or clarification is required, the party making a request for ADR will be asked to provide such additional information or clarification. Any request for additional information or clarification will be time bound (usually not exceeding seven (7) business days and will depend on the complexity of the information requested) for response. Where the Applicant fails or refuses to provide such additional information within the specified time, URCA may close the Dispute.

URCA therefore proposes that consequential to an initial assessment of the dispute it shall, within ten (10) business days of having received the Notice of Dispute and all required information, notify the Applicant in writing (either e-mail or letter) of the course of action that will be taken in the process, which may include:

- (iii) directing the Applicant to commence or continue reasonable efforts to resolve the dispute; or
- (iv) notifying the Respondent that a dispute has been made against it and request initial comments.

Alternatively, where URCA decides that the dispute is unfounded, it proposes to notify the parties in writing and provide reasons for such decision.

9.5 Notification of Dispute to Respondent

Where it is decided that the information and documentation in support of a Dispute establishes a bona fide Dispute to be resolved, then, URCA proposes to notify the Respondent in writing of the issues under dispute between the parties. URCA also proposes to provide the Respondent with a copy of the material submitted by the Applicant, except for any material clearly marked "Confidential" as submitted to URCA.

9.6 Response by Respondent to Dispute

Where a Dispute is referred to URCA by a licensee and URCA has formally notified the Respondent of the Dispute, URCA proposes to request from the Respondent comments in writing regarding the issues under dispute. The Respondent should provide its comments to the Dispute to URCA using the prescribed Response to Dispute Form (URCADR-3) (draft copy found in Annex A herein). In this regard, URCA proposes a timeframe not exceeding fourteen (14) business days from giving notification of a Dispute to the Respondent for

comments. In exceptional circumstances, the Respondent may be required to respond in a shorter timeframe which may include, but will not be limited to, circumstances where the Applicant is suffering significant harm or disadvantage pending the resolution of the Dispute.

URCA expects the comments from the Respondent to include the following information:

- (iv) whether the Respondent admits or denies the issues in the Dispute;
- (v) a response to each of the issues arising in the Dispute; and
- (vi) information and copies of any documents the Respondent intends to rely on in defending against the issues raised in the Dispute.

Where the Respondent either refuses or fails to respond to a request for comments or for additional information and clarification by URCA within the required timeframe, URCA proposes to take the appropriate regulatory and other measures to resolve the Dispute based on the information in its possession at that time.

9.7 Mediation

URCA recognizes that in certain matters referred to it for dispute resolution, an informal and flexible approach, such as mediation may be a more appropriate method to resolving a Dispute between licensees. Mediation, as an alternative means of resolving disputes between licensees, has the advantages of being cost and time effective for the parties and preserving long-term relationships upon which the electronic communications sector is based.

URCA is also aware that the success of ADR often depends on the incentives of the parties involved to reach a solution to the issues in a Dispute. Regrettably, in The Bahamas, recourse to alternative means of dispute resolution, such as mediation, present a challenge as there is a dearth of established ADR schemes¹⁶ to which disputes specific to the ECS may be referred. As such, URCA proposes to offer the facility of mediation as part of its ADR scheme and procedures for resolving inter-licensee disputes under the ADR Guidelines.

Having reviewed all submissions by the parties to a Dispute, URCA may recommend or the parties may consider that the issues under dispute may be effectively resolved through the alternative mechanism of mediation. Where mediation is determined to be an appropriate measure to resolve a Dispute, URCA proposes to make its recommendation for mediation within fourteen (14) business days from receiving comments from the Respondent. A recommendation by URCA for mediation will not be binding on the parties but may be taken into account should URCA have to decide costs payable under ADR Guidelines.

¹⁶ Unlike in the UK where Ofcom has approved ADR schemes such as “Ombudsman Services: Communications” (‘Otelo’) and “the Communications and Internet Services Adjudication Scheme” (‘CISAS’).

Where the parties agree to mediation, they should notify URCA in writing and request URCA to initiate the mediation process. URCA proposes that such notification should be submitted to URCA within fourteen (14) business days from the expiration of the timeframe for response by the Respondent as provided at section 9.6 above. URCA proposes to initiate the mediation process within five (5) business days subsequent to receiving such written notification for mediation from the parties.

URCA considers that recourse to mediation should be conditional to all parties agreeing to such process. Where a Dispute is referred to URCA for mediation by the parties or agreed by the parties consequential to a recommendation by URCA, URCA proposes to adopt the Mediation Rules, as set out in Annex B contained herein, to govern the mediation process.

Question 17: Do you agree with mediation by URCA as an alternative mechanism to resolving a Dispute? If not, kindly suggest any additional approach and your reasons for any other approach. Please also provide comments to the draft Mediation Rules as contained in Annex B.

9.8 Arbitration

Following a detailed analysis of all submissions by the parties to a Dispute or where a Dispute is referred to URCA for arbitration, URCA proposes to either resolve the Dispute in accordance with the procedure contemplated under section 9.9 the ADR Guidelines or refer the dispute to a Dispute Resolution Panel (the Panel) for resolution as contemplated under Section 10 below.

9.9 Regulatory Determination

Where URCA decides to resolve a Dispute between licensees in accordance with the procedure set out under section 99 of the Comms Act, URCA will give notice to the Respondent of the Preliminary Determination:

- (vi) specifying the determination to be made;
- (vii) specifying the issues which are the subject of the Preliminary Determination;
- (viii) specifying the period (not exceeding 30 calendar days) that the Respondent may make representations about the matters in the Preliminary Determination; and
- (ix) enclosing a draft Order URCA intends to issue with a Final Determination, if applicable.

Depending on the representations submitted to URCA by the Respondent and any interested party, URCA will within thirty (30) calendar days after receiving such representations issue its Final Determination and Order to the dispute. URCA proposes to communicate its Final Determination and Order to all parties to the dispute. The Final Determination and Order will be published on the URCA website, having regard to any

requests for commercial confidentiality which URCA considers to be justified. URCA's Final Determination will include, *inter alia*, clear reasons for its decision.

URCA believes it is important to emphasize that the Final Determination will not preclude any of the parties to the dispute from making an appeal in accordance with the Comms Act or any other relevant legislation.

10. Referral of Dispute to Dispute Resolution Panel

URCA recognizes that disputes between licensees sometimes involve determining issues that are complex and highly specialized. For example, technical matters related to network access and interconnection between licensees. Because URCA has limited resources and must carry out its functions and exercise its powers in a manner that makes best use of the economic and other resources available to it, URCA believes that the referral of potentially complex disputes between licensees to the Panel for resolution would allow for the timely and effective resolution such disputes by experts in the field.

Following a detailed analysis of all submissions by the parties to a Dispute, URCA proposes to refer a Dispute for resolution by the Panel where, in the opinion of URCA, the nature and scope of the issues raised under the Dispute are likely to be more effectively and efficiently resolved by the Panel.

Question 18: Do you believe the referral of disputes to a Dispute Resolution Panel allow for the timely and effective resolution of potentially complex disputes? Please provide a full explanation for your position.

10.1 Appointment of Dispute Resolution Panel

URCA proposes to appoint a Dispute Resolution Panel which will be responsible for the conduct of ADR proceedings and for the resolution of a Dispute between licensees in accordance with the ADR Guidelines.

Where URCA appoints a Dispute Resolution Panel, URCA proposes that the Panel be comprised of either one (1) or three (3) members, who would be independent of all parties to the Dispute. Where more than one member is appointed, URCA proposes to appoint one expert member of the Panel as its Chairperson.

In appointing or approving the Panel, URCA proposes to, *inter alia*:

- (i) ensure that the qualification, training and experience of each member of the Panel are relevant to the ADR process and the matters in dispute; and
- (ii) provide to the parties upon request, information regarding the qualification of any or all members of the dispute resolution panel.

Before commencement of the ADR proceedings, URCA proposes that each member of the Panel must disclose to URCA any facts or circumstances which are of such nature as to call into question the impartiality or independence of such member. Where a member of the Panel discloses such circumstances that may give rise to justifiable doubt as to the Panel member's impartiality or independence, or where a party to the dispute knows of such circumstances, the party may object to and URCA may reject the appointment of such member to the Panel. In such circumstances, URCA proposes to appoint another member to the Panel.

Where during the ADR proceedings a member of the Panel is no longer able to act in that capacity, URCA proposes to appoint a replacement member or, where the circumstances permit, to determine that the ADR proceedings continue without replacement of such member.

10.2 Dispute Resolution Panel Terms of Reference

URCA proposes to establish Terms of Reference for the Panel and serve a copy of such Terms of Reference on each party to a Dispute. The Terms of Reference will include, at a minimum, high level directions for the conduct of the ADR proceedings and all submissions by the respective parties to a Dispute made under the ADR Guidelines.

While the Panel should be guided by the principles as set out in section 7.1 above, URCA believes that any decision by the Panel should be based on all the relevant facts as disclosed within the course of the ADR procedure, the provisions of the Comms Act or licence issued under the Comms Act, the provisions of any other relevant law of The Bahamas and any relevant agreements existing between the parties to a Dispute.

10.3 General Conduct of Proceedings by the Panel

URCA is of the opinion that its involvement and intervention into the conduct of the ADR proceedings by the Panel should be very limited. As such, URCA believes that the Panel should determine its procedures for the conduct of proceedings when resolving inter-licensee disputes.

Unless otherwise determined by the Panel in its sole discretion, URCA proposes that all hearings of ADR proceedings be public and the Panel should be entitled to invite or accept any submission by any person in relation to the Dispute. The proceedings should therefore take place at such place as the Panel considers appropriate having regard to all the circumstances, ensuring however, that there are adequate accommodations for the parties and all their respective representatives.

URCA proposes that in the course of the ADR process, the Panel may seek evidence from any relevant source, whether connected to the parties or not, including but not limited to scientific, technical or legal opinion from experts.

10.4 Directions and Timetabling by the Panel

URCA proposes that the date of commencement of the ADR proceedings before the Panel would be the date on which URCA issues Terms of Reference and all submissions by the respective parties to a Dispute made under the ADR Guidelines to the Panel. Having received the Terms of Reference and all submissions by the respective parties, URCA proposes that the Panel take the following steps as soon as reasonably practicable:

- (i) adopt a procedural timetable which it intends to follow and provide copies of such timetable to the parties to the Dispute and to URCA; and
- (ii) issue directions to the parties to the Dispute for the conduct of the ADR proceedings. Such directions must take into account the high level directions which are included in its Terms of Reference pursuant to section 10.2 above and may include any other matter related to the conduct of the proceedings as the Panel considers appropriate.

URCA believes that the timetable and the directions for the conduct of the ADR proceedings by the Panel must seek to ensure that the proceedings are completed as expeditiously as is practicable, having regard to the overriding need to ensure that the parties are afforded adequate opportunity to present their position in a fair, objective and non-discriminatory manner, observing due process at all times.

URCA therefore proposes that the Panel should have the sole discretion to modify the timetable and or any direction issued under section 10.4 (i) and (ii) above, whether upon application by one or more of the parties or otherwise. URCA also proposes to require the Panel to duly notify URCA of any such modification to the timetable set for the resolution of a Dispute before the Panel and the reasons for such modification.

10.5 Determination of Issues by the Panel

URCA is of the opinion that the Panel must have jurisdiction to determine all matters and issues pertaining to the resolution of a Dispute. The Panel should also have the power to make any interim or conservatory order as it deems appropriate. URCA therefore proposes that parties to a Dispute agree to be bound by the determinations and orders of the Panel consequential to the resolution of a Dispute.

A determination or order by the Panel will not preclude any of the parties to a Dispute from making an appeal in accordance with the Comms Act or any other relevant legislation.

10.6 Decision-Making by the Panel

URCA proposes that the decisions of the Panel, where the panel consists of more than one member, will be made by a majority of the members of the Panel.

While URCA recognizes that disputes between licensees can be complex, it believes that the focused attention and treatment of a Dispute brought to bear by the Panel should minimize delays and result in a speedy resolution of the Dispute. URCA is also aware that the issues under dispute between licensees sometimes have a cascading impact on consumers. As such, URCA believes that timely resolution of disputes by the Panel is important. URCA therefore proposes that the Panel should endeavour to issue its decision to a Dispute within three (3) months of the date of issuance of its Terms of Reference by URCA under section 10.2 above¹⁷ and all submissions by the respective parties.

URCA proposes that the Panel may issue its determination orally in the first instance, at a hearing called for that purpose, of which no less than three (3) calendar days prior notice should be given to all parties and to URCA. However, URCA proposes that within fourteen (14) calendar days of the date on which the determination is issued orally, the Panel must issue its determination in writing to all the parties to a Dispute and to URCA which shall contain reasons for the decisions contained therein.

URCA further proposes that the determination by the Panel must be signed by all members of the Panel. However, where the Panel comprises of more than one member, the signatures of the majority of all members of the Panel will suffice and reasons provided for the absence of any signature is stated.

URCA believes that it is important to emphasize that the determination by the Panel is intended to be binding on the parties and proposes that it take effect within fourteen (14) days after the date of issuance of the written determination, or otherwise as expressly stated in the determination, provided that no appeal has been lodged by any party under the Comms Act or otherwise.

Where a determination by the Panel involves a monetary award, URCA proposes that the Panel may on its own initiative or on the application of any party to the Dispute, order the payment of interest on the award from such time as the Panel considers reasonable under the circumstances. In the event that the Parties arrive at a settlement during the proceedings in accordance with section 9.7 above, the settlement may, upon application to the Panel by the parties and at the sole discretion of the Panel, constitute the determination.

Where there are any clerical, computational or typographical error, or any other error of similar nature contained in the written determination issued by the Panel, URCA proposes that they be corrected by the Panel either:

¹⁷ This timeframe excludes the period that URCA will require to receive and fully review all submissions by the parties to a dispute and refer the dispute to the Panel with the supporting documents.

- (i) on its own initiative, provided that such correction is submitted for approval to the Panel within thirty (30) calendar days of the date of the issuance of the written determination; or;
- (ii) on application by any party to the Panel within thirty (30) calendar days of the date of issuance of the written determination. In such circumstances URCA proposes that that Panel notify the other party to the Dispute of such application for correction of the determination and allow such party a period not exceeding fourteen (14) calendar days to submit comments in relation to such application or the issue to which the application relates.

Where the Panel decides to correct the determination as provided above, URCA proposes that it shall issue its correction no later than fourteen (14) calendar days of the expiration of the period of time for the receipt of any comments from the other party or within such other period as the Panel may decide. Such correction of the determination will take the form of a corrigendum and shall constitute part of the determination issued by the Panel.

URCA proposes that the determination issued by the Panel must be registered at and filed with URCA and may be published by URCA in such manner as URCA thinks appropriate.

URCA believes that because the parties to a Dispute are to be bound by the decision of the Panel, any party to the ADR proceedings shall have the right and power to take any action to enforce the determination or any order of the Panel.

10.7 Costs of Proceedings before the Panel

URCA proposes that the costs of the proceedings should include all costs reasonably incurred in connection with the proceedings. Without limitation to the foregoing, costs is proposed to include the fees and expenses of the Panel, the fees and expenses of any experts appointed by the Panel, and the reasonable legal and other costs incurred by the parties throughout the proceedings.

URCA proposes that the Panel may upon application by a party or on its own motion, at any time during the proceedings, make an order as to costs in relation to particular parts of the proceedings, which shall be binding on the parties. At the conclusion of the ADR process (either as part of the final determination or otherwise), the Panel shall make a final order as to costs and shall decide which of the parties shall bear the costs or in what proportion such costs shall be borne by the parties. The order shall be binding on the parties.

In deciding what may be reasonable costs to award, URCA proposes that the Panel should take into account all the circumstances regarding the matter including, but not limited to, the following:

- (i) the care, speed and accuracy with which the matter was prepared by the parties to the Dispute;
- (ii) the conduct of the parties before, as well as during, the proceedings; and

- (iii) the manner in which the parties pursued –
 - (a) a particular allegation;
 - (b) a particular issue; and
 - (c) the dispute as a whole.

10.8 Confidentiality of Information before the Panel

Save as disclosed during any oral hearing before that Panel or in any determination by the Panel, or as otherwise expressly determined by the Panel, all matters, documents or other information disclosed during or in connection with the ADR proceedings shall be held confidential by all parties.

11. Next Steps

URCA will carefully consider all comments and submissions received within the prescribed timeline for responding to this Consultation document. URCA intends to issue a Statement of Results and Final Determination (with accompanying ADR Guidelines) to this Consultation within thirty (30) calendar days following the end of the consultation period. URCA will give full reasons for its decisions.

Annex A –DISPUTE RESOLUTION PROCEDURES FORMS (DRAFT)

URCADR-1

UTILITIES REGULATION & COMPETITION AUTHORITY

Notice of Dispute Form (Consumer/Licensee)

1. Details of Applicant/Complainant

Name of Applicant:	
Address (including Postal Address):	
Contact Person for this Application:	
Name:	Position:
Telephone (Work):	(Home):
Facsimile (Work):	(Home):
Mobile:	E-mail:
Your Telephone and Customer Account Number	
Respondent’s Complaint Reference Number:	
Date Complaint was submitted to Respondent:	

2. Details of Respondent

Name:	
Address (including Postal Address):	
Contact Person for Complaint:	
Name:	Position:
Telephone (Work):	E-mail:
Facsimile (Work):	

3. Dispute Determination Request of the following issue(s):

I/We the above-named Applicant, having first made good faith and reasonable efforts to resolve the following dispute with the above-named Respondent/Licensee and having failed to do so, now request the Utilities Regulation & Competition Authority to determine the matter. [Please continue on a separate page if necessary].

4. Details of Dispute

Please supply the specific details of your dispute [i.e. what it relates to; when it occurred; what steps you have taken to attempt to resolve the matter with the opposite side]. You should attach a copy of all relevant documentation to this application [e.g. letters, contracts, etc.]. (Continue this information on a separate page if necessary).

5. Impact of Dispute

Please detail what impact this dispute is or is likely to have if unresolved. (Continue this information on a separate page if necessary).

6. Remedy Requested

Please specify what action you require to resolve this dispute. (Continue this information on a separate page if necessary).

7. Signature of Applicant

By signing this application, you undertake that you are duly authorized to commence these proceedings and to sign on behalf of the Applicant.

Signed:	Print Name:
Position:	Date:

IMPORTANT INSTRUCTIONS FOR FILING A DISPUTE DETERMINATION REQUEST

To file this application you must: (a) complete and sign the Notice of Dispute Form; (b) attach a copy of any relevant correspondence, information, documents and exhibits, and send all of the foregoing to the addressee below within a period not exceeding thirty (30) business days after the Licensee’s internal escalation process for resolving complaints has been exhausted:

The Chief Executive Officer, The Utilities Regulation & Competition Authority, UBS Annex Building, East Bay Street, P. O. Box N-4860, Nassau, Bahamas

Telephone: 242 393-0234

Fax: 242 393-0153

E-mail: info@urcabahamas.bs

E-mail: info@urcabahamas.bs

**UTILITIES REGULATION & COMPETITION AUTHORITY
Notice of Dispute Form (Inter-Licensee)**

1. Details of Applicant

Name of Applicant:	
Address (including Postal Address):	
Contact Person for this Application:	
Name:	Position:
Telephone:	
Facsimile:	
E-mail:	
Date dispute was submitted to Respondent:	

2. Details of Respondent

Name:	
Address (including Postal Address):	
Contact Person for Dispute:	
Position:	
Telephone:	
E-mail:	
Facsimile:	

3. Dispute Determination Request of the following issue(s):

I/We the above-named Applicant, having first made good faith and reasonable efforts to resolve the following dispute with the above-named Respondent and having failed to do so, now request the Utilities Regulation & Competition Authority to determine the matter.
[Please continue on a separate page if necessary].

4. Details of Dispute

Please supply the specific details of your dispute [i.e. what it relates to; when it occurred; what steps you have taken to attempt to resolve the matter with the opposite side]. You should attach a copy of all relevant documentation to this application [e.g. letters, contracts, etc.]. (Continue this information on a separate page if necessary).

5. Interested Parties

Are there any other persons or organizations who or which may be directly affected by, or who has a sufficiently close interest in the outcome of this Dispute? If so please insert their contact details. [Continue this information on a separate page if necessary].

Name:	
Address (including Postal Address):	
Telephone:	
Facsimile:	
E-mail:	
Reason this person may be affected or have sufficient interest in the outcome:	

6. Impact of Dispute

Please detail what impact this dispute is or is likely to have if unresolved. (Continue this information on a separate page if necessary).

7. Remedy Requested

Please specify what action you require to resolve this dispute. (Continue this information on a separate page if necessary).

8. Signature on Behalf of Applicant

By signing this application on behalf of the Applicant, you undertake that you are duly authorized to commence these proceedings and to sign on behalf of the Applicant.

Signed:	Print Name:
Position:	Date:

IMPORTANT INSTRUCTIONS FOR FILING A DISPUTE DETERMINATION REQUEST

To file this application you must: (a) complete and sign the Notice of Dispute Resolution Form; (b) attach a copy of any relevant correspondence, information, documents and exhibits and send all of the foregoing to the addressee below:

The Chief Executive Officer, The Utilities Regulation & Competition Authority, UBS Annex Building, East Bay Street, P. O. Box N-4860, Nassau, Bahamas

Telephone: 242 393-0234
E-mail: info@urcabahamas.bs

Fax: 242 393-0153
E-mail: info@urcabahamas.bs

**UTILITIES REGULATION & COMPETITION AUTHORITY
Response to Dispute Form (DRAFT)**

1. Parties

Name of Applicant:
Name of Respondent:

2. Acknowledgement of receipt of Notice of Dispute

I/We, the above-named Respondent, acknowledge that I/We have received a Notice of Dispute dated the day of , and accompanying documents.

3. Response to Notice of Dispute

As the Respondent in this Dispute, I/We say that: [Please tick the appropriate box(es)]:

- I/We *admit/deny [*strike out whichever does not apply] the Dispute as stated in the Notice of Dispute as submitted to me/us;

- I/We *accept/do not accept [*strike out whichever does not apply] the outcome sought by the Applicant, and see my/our reasons specified below;

- (c)I/We respond to each of the allegations stated in the Dispute as set out below.

4. Response to Details of the Dispute

In response to the Application, I/We say that: (please continue on a separate page if necessary). Please set out in detail your response to the allegations contained in the Notice of Dispute, including the proposed remedy requested by the Applicant.

5. Signature of Respondent

The Respondent’s representative may sign on behalf of the Respondent, and in so doing undertakes that he or she has the authority to do so.

Signed:	Print Name:
Position:	Date:

IMPORTANT INSTRUCTIONS FOR SUBMITTING REPLY TO DISPUTE
 The Respondent must complete and sign this form and send it with a copy of all documentation relevant to your response(s) to the allegations to the Utilities Regulation & Competition Authority (URCA) within 14 business days of the date of receiving the Notice of Dispute. Otherwise URCA will proceed with Determining this Dispute.

Annex B – Mediation Rules (DRAFT)

1. Introduction

- 1.1 The Utilities Regulation and Competition Authority (URCA) issues these Mediation Rules (the Rules) pursuant to section 15(1) of the Communications Act, 2009. Under this provision, URCA has a duty to establish one or more alternative dispute resolution (ADR) schemes (including mediation) for disputes between one licensee and another and disputes between licensees and consumers, or approve a scheme(s) proposed by licensees. Where such disputes are lodged for resolution by mediation, the mediation shall take place in accordance with these Rules. The Rules include the Schedule of Mediation Fees (the Schedule) in effect at the commencement of the mediation.

2. Scope of Rules

- 2.1 Upon agreement by the parties in writing to settle a Dispute by way of mediation, these Rules shall apply.

3. Commencement of Mediation

- 3.1 A party or parties wishing to commence mediation proceedings pursuant to these Rules shall submit a Request for Mediation in writing to URCA. If the Request for Mediation is not made jointly by all parties to the mediation, the party requesting the mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties.
- 3.2 The Request for Mediation shall contain or be accompanied by:
- (i) the names, addresses and telephone, fax, e-mail or other communication references of the parties to the Dispute and of the representative of the party filing the Request for Mediation;
 - (ii) a copy of the agreement to mediate; and
 - (iii) a brief statement of the nature of the Dispute.
- 3.3 The date of the commencement of the mediation shall be determined by the Mediator appointed under these Rules or as agreed by the parties to the mediation process.

4. Appointment of the Mediator

- 4.1 Unless the parties have agreed on the appointment of a Mediator, the Mediator shall be appointed by URCA after consultation with the parties. Any Mediator agreed by the parties or appointed by URCA shall be neutral, independent and impartial. Additionally, the Mediator must have the following minimum qualifications:
- a) previous mediator training by an accredited mediation or arbitration body;
 - b) certifications or membership on a mediator roster of an accredited mediation or arbitration body;
 - c) relevant experience as a mediator; and
 - d) five (5) years' experience in a regulatory or utility environment.
- 4.2 Before accepting appointment, the Mediator shall disclose to the parties and to URCA any circumstances that might give rise to justifiable doubt as to the Mediator's impartiality or independence, or confirm in writing that no such circumstances exist.
- 4.3 If, at any stage during the mediation, new circumstances arise that might give rise to justifiable doubt as to the Mediator's impartiality or independence, the Mediator shall promptly disclose such circumstances to the parties and URCA.
- 4.4 Where the Mediator discloses such circumstances that may give rise to justifiable doubt as to the Mediator's impartiality or independence, or where a party independently knows of such circumstances, the party or parties may object to and URCA may reject the appointment of the Mediator. In such circumstances, URCA shall appoint another Mediator.

5. Role of the Mediator

- 5.1 The Mediator shall act in an independent and impartial manner to assist the parties in reaching an amicable settlement of the dispute, but shall have no authority to impose a settlement on the parties.
- 5.2 The Mediator shall be guided by principles of objectivity, fairness and transparency, giving equal consideration to the rights and obligations of the parties and the circumstances surrounding the Dispute, including any previous business practices between the parties.
- 5.3 Where the Mediator has reason to believe that any issue in dispute between the parties is not susceptible to resolution through mediation, the Mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the Mediator considers are most likely, having regard to the

circumstances of the Dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues. In particular, the Mediator may so propose:

- (i) an expert determination of one or more particular issues; or
- (ii) arbitration.

6. Representation of Parties and Participation in Meetings

- 6.1 Any party to the mediation may represent itself in the mediation or may be represented or assisted by another person in meetings with the Mediator. A party to the mediation process must have a representative present at all times during the mediation with the authority or delegated authority to discuss and negotiate a settlement. The parties may seek counsel at any time during the mediation if they so choose.
- 6.2 Within five (5) business days of the appointment of the Mediator, the names and addresses of persons authorised to represent a party, and the names and positions of the persons who will be attending the meetings of the parties with the Mediator on behalf of that party, shall be communicated in writing by that party to the other party, the Mediator and to URCA.

7. Conduct of the Mediation

- 7.1 The mediation shall be conducted in the manner agreed by the parties. If, and to the extent that the parties have not made such an agreement, the Mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted; having in mind at all times the circumstances of the case and the wishes of the parties.
- 7.2 As soon as reasonably possible after being appointed, the Mediator shall, in consultation with the parties, establish a timeline for the submission by each party to the Mediator and to the other party of a report summarizing the Dispute, the party's interests and contentions in relation to the Dispute and the present status of the Dispute, together with such other information and materials as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.
- 7.3 The Mediator shall fix the time of each mediation session. The mediation shall be held at the office of the Mediator or at any other convenient location agreeable to the Mediator and the parties as the Mediator shall determine.

- 7.4 The Mediator may meet with and communicate separately with each party or the party's representative. The Mediator shall notify all other parties of any such separate meetings or other communications. The Mediator shall not disclose any information given at such meetings to the other party without the written authorization of the party giving the information.
- 7.5 The parties and their representatives agree to co-operate in good faith with the Mediator in ensuring that the mediation is conducted expeditiously, to submit written materials and provide evidence as requested by the Mediator, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through their authorised representatives.
- 7.6 The Mediator may at any time during the mediation suggest that a party provide such additional information or materials as the Mediator deems necessary and useful to the mediation process.

8. Confidentiality

- 8.1 Mediation is intended to be private and confidential. Persons not authorised as representatives of the parties may only attend mediation sessions with the permission of the parties and with the consent of the Mediator.
- 8.2 The parties and the Mediator agree not to disclose or transmit to any outside party, introduce or otherwise use any documents, information, opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the Mediator as evidence in any action at law or other judicial or arbitration proceeding unless authorised in writing by the parties to the mediation or compelled by law.
- 8.3 Save and except as agreed between the parties and the Mediator, no formal recording of any kind or transcript shall be made of any meetings of the parties with the Mediator. However, subject to Clause 8.2 above, the parties to the mediation may take written notes of matters discussed and agreed during the mediation with the Mediator.
- 8.4 Each person involved in the mediation process, including the Mediator, the parties and their representatives, and any other person present during the meetings of the parties with the Mediator, shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

9. Settlement Agreement

- 9.1 Each party may, on its own initiative or at the invitation of the Mediator, submit to the Mediator suggestions for the settlement of the Dispute.
- 9.2 Where it appears to the Mediator that there exist elements of a settlement which would be acceptable to the parties, the Mediator may formulate the terms of a possible settlement and submit them to the parties for their comments. The Mediator may reformulate the terms of a possible settlement after giving consideration to the views of the parties.
- 9.3 If terms are agreed in settlement of the Dispute, the parties shall draw up and sign a settlement agreement, setting out such terms.

10. Termination of the Mediation

- 10.1 The mediation shall be terminated:
- (i) by the execution of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
 - (ii) by a decision of the Mediator if, in the Mediator's sole opinion, further efforts at mediation are unlikely to lead to a resolution of the Dispute; or
 - (iii) by a written declaration of a party at any time after attending the first meeting of the parties with the Mediator and before the signing of any settlement agreement.
- 10.2 Where a party determines to terminate the mediation process it shall give the other party and the Mediator ten (10) working days prior written notice of such determination.
- 10.3 Upon termination of the mediation, the Mediator shall promptly send to URCA a notice in writing that the mediation is terminated and shall include the date on which it terminated, whether or not the mediation resulted in a settlement of the Dispute and, if so, whether the settlement was full or partial. The Mediator shall send to the parties a copy of the notice addressed to URCA.
- 10.4 URCA shall keep the said notice of the Mediator confidential and shall not, without the written authorisation of the parties, disclose either the existence or the result of the mediation to any person.
- 10.5 URCA may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the Dispute to be identified.

10.6 Unless required by a competent court or authorised in writing by the parties, the Mediator shall not act in any capacity whatsoever, otherwise than as a Mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the Dispute.

11. Mediation Fee

11.1 Provided that the Dispute is between one licensee and another, the Request for Mediation shall be subject to the payment to URCA of an administration fee by each party to the mediation, the amount of which shall be fixed in accordance with the fees as described in the Schedule contained herein. Such fees become payable on the date of the submission of the Request for Mediation and shall not be refundable.

11.2 No action shall be taken by URCA on a Request for Mediation until the administration fee has been paid.

11.3 If a party to the Request for Mediation fails within fifteen (15) working days after a second reminder in writing from URCA to pay the administration fee it shall be deemed to have withdrawn its Request for Mediation.

12. Exclusion of Liability

12.1 URCA shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.

13. Waiver of Defamation

13.1 The parties and the Mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint.

Schedule of Mediation Fees

Mediation Fee	
(per Licensee)	Assessed in equal parts

Annex C – Summary of Consultation Questions

Question 1: Do you agree that a definition for the term “dispute” is necessary? If so, do you believe that the proposed working definition is adequate? Should you disagree with the adequacy of the propose definition, kindly give a detailed explanation for your views and suggest an alternative.

Question 2: Do you agree with the general status and effect of the proposed Dispute Resolution Guidelines? Should you disagree, kindly give a detailed explanation for your views.

Question 3: Do you agree with the scope of the proposed Dispute Resolution Guidelines? Should you disagree, kindly give a detailed explanation for your views.

Question 4: Do you believe that the ADR Guidelines should have clear timeframes? Do you agree with the proposed timelines for the resolution of disputes? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.

Question 5: Do you agree with the basis on which URCA proposes to decline or dismiss a dispute? Kindly give a detailed explanation for your views.

Question 6: Kindly provide your views on URCA’s proposal to allow an Applicant to withdraw a dispute at any time before a regulatory or other measure is issued.

Question 7: Do you believe that URCA should use oral hearings as part of its approach to determining a dispute between licensees? If not, provide a full explanation for your position.

Question 8: Do you agree with URCA regarding reconsideration of its regulatory measure? If you disagree, kindly provide your views on URCA’s regulatory measure being reconsidered by URCA.

Question 9: Do you believe that URCA should require a party to a dispute to set out a desired remedy or should URCA determine what remedy is appropriate? Kindly provide full explanation for your views.

Question 10: Do you agree with URCA’s proposal to award costs in the circumstances as described in section 7.15 above? If you disagree, kindly provide full reasoning your position.

Question 11: What are your views on “Offers of Settlement” and URCA’s role and

intervention in the settlement process?

Question 12: Do you agree with the circumstances under which URCA proposes to close a Dispute? If not, kindly provide explanation for your position.

Question 13: Do you agree with how URCA proposes to treat with confidential information submitted to it in the ADR process? If not, kindly provide explanation for your position.

Question 14: Do you agree with the criteria URCA proposes to establish for the referral to it of disputes between a consumer and licensee? If not, kindly provide explanation for your position.

Question 15: Do you agree with the proposed approach by URCA to assessing a Dispute? If not, kindly explain and suggest an alternative approach.

Question 16: Do you agree with the proposed approach by URCA to facilitate mediation between a consumer and a licensee through the appointment of the CCRM as a mediator? If not, kindly explain and suggest an alternative approach.

Question 17: Do you agree with mediation by URCA as an alternative mechanism to resolving a Dispute? If not, kindly suggest any additional approach and your reasons for any other approach. Please also provide comments to the draft Mediation Rules as contained in Annex B.

Question 18: Do you believe the referral of disputes to a Dispute Resolution Panel allow for the timely and effective resolution of potentially complex disputes? Please provide a full explanation for your position.