



# **STATEMENT OF RESULTS**

## **URCA DRAFT ANNUAL PLAN for 2015**

**ECS 03/2015**

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## 1. INTRODUCTION

Under section 41(4) of the Utilities Regulation and Competition Authority Act (URCA Act), the Utilities Regulation and Competition Authority (URCA) is statutorily mandated to publish a draft annual plan on its website no later than the end of the financial year<sup>1</sup>, and afford interested third parties the opportunity to comment on the draft plan prior to its final publication. In compliance with this statutory requirement, on December 31, 2014, URCA published its draft Annual Plan for 2015 (Draft Annual Plan) and invited comments from the general public. The deadline for submission of responses was January 30, 2015.

URCA's Draft Annual Plan sets out in detail the programme of work URCA proposes to undertake for the forthcoming financial year commencing January 1, 2015 and ending on December 31, 2015.

The Draft Annual Plan outlined, inter alia, the following:

- A Review of URCA's 2014 Achievements;
- URCA's Plan for 2015;
- An Evaluation of URCA's Effectiveness; and
- URCA's Draft Budget for 2015.

This Statement of Results document now provides a summary of written responses to the Draft Annual Plan. The full text of submissions can be found on URCA's website at [www.urbahamas.bs](http://www.urbahamas.bs).

URCA received written responses to the Draft Annual Plan from the following stakeholders:

- 1) The Bahamas Telecommunications Company Limited (BTC); and
- 2) Cable Bahamas Ltd. and its subsidiaries<sup>2</sup> (CBL).

URCA thanks the respondents to this consultation for their contributions. All comments and suggestions received have been carefully considered by URCA as part of its process to refine the Draft Annual Plan and create an appropriate final plan for 2015.

### Structure of the Remainder of this Document

Section 2: Summary of Responses Received

Section 3: Conclusion and Next Steps

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<sup>1</sup> "Financial year" is defined in s. 2 of the URCA Act as "a calendar year".

<sup>2</sup> Caribbean Crossings Ltd. and Systems Resource Group Limited (SRG).

## **2. SUMMARY OF RESPONSES RECEIVED**

### **2.1 General Comments**

#### BTC's Response

BTC welcomed the opportunity to comment on URCA's Draft Annual Plan for 2015 and particularly noted URCA's commitment to the development and training of its employees. BTC particularly noted URCA's proposed initiatives to raise public awareness of URCA's remit and role in 2015. BTC stated that it is important to keep consumers and stakeholders, including licensees abreast of developments in the sector.

#### CBL's Response

CBL commented that it considered 2014 as a pivotal year for the relationship between URCA and the operators in the Electronic Communications Sector (ECS) in The Bahamas since both sides were able to discuss the way forward for the advancement of the sector and the country overall. CBL stated that it looks forward to further engagement and dialogue with URCA.

#### URCA's Response

URCA thanks BTC and CBL for their continued support of URCA's work during the past year and for their positive comments regarding URCA's efforts to assist in the development of the ECS overall. URCA also looks forward to engaging the industry and consumers on further initiatives proposed for 2015.

### **2.2 URCA's Budget and Fees**

#### CBL's Response

CBL commented that it was very concerned about the significant increase of 13.2% in URCA's overall operating budget. CBL also suggested that an explanation for the changes of the budget should be included in future annual plans. CBL further commented that given the current economic state of the country, fiscal measures should be employed by URCA to reduce its overall expenditure.

CBL noted that while training and participation in conferences is important to the development of URCA staff, lessons learnt have not been shared with the industry. With regard to the increase in the budget for rent, CBL suggested that URCA consider investing in a building as it would be a more reasonable and appropriate use of public funds compared to expensive annual rental contracts.

CBL expressed concern that the increase in staff and relocation expenses may be attributable to future regulation of the energy sector by URCA. CBL noted that URCA did not mention what would happen to the operators' contributions to the budget should the proposed regulation of the sector does not materialize. CBL also recommended that URCA include the following items in future annual plans:

- i) disclosures relating to VAT allocations;
- ii) an explanation for assumptions made in the budget;
- iii) an explanation for the variances from one year to the next; and
- iv) inclusion of a forecast to the end of year compared to the budget allocations of the previous year, including an explanation for any variances.

### URCA's Response

URCA notes CBL's concern of the increase of URCA's budget for 2015. URCA notes that the increase in the budget is largely attributable to the relocation of URCA's offices and plans to increase public awareness of URCA, educating URCA stakeholders as well as the engagement and participation in international events hosted by international organizations such as the ITU.

URCA notes CBL's comments regarding knowledge transfer with URCA stakeholders by URCA staff upon return from training and conferences and URCA will consider such initiatives moving forward.

URCA assures CBL that the increase in staff and relocation expenses is not attributable to future regulation of the energy sector. It should be noted that staff costs decreased 30% of the total operating budget compared to 35% of the operating budget for 2014, notwithstanding an increase in URCA's staff compliment. URCA reiterates that the increase in rent and utilities is attributable to URCA's efforts to secure new premises due to the expiration of URCA's lease and space limitations for URCA's current premises. Therefore, URCA considered that the new premises must be significantly larger than the current premises in order to accommodate the anticipated increase in staff to carry out its existing regulatory functions. URCA however notes that the rental rate per square foot is significantly reduced.

In the event that URCA is empowered as the regulator of the energy sector by the Government of The Bahamas, URCA anticipates that a separate budget will be prepared to address the prospective demands of the industry. Finally, URCA notes CBL's recommendations for specific items to be included in future annual plans and URCA will give careful consideration to CBL's suggestion moving forward.

## **2.3 Work Plan**

### CBL's Response

CBL complimented URCA on the development of the Consumer Protection Regulations and commented that the sector is greatly improved with educated consumers. CBL also applauded URCA on its various initiatives such as town meetings, advertisements and appearances on talk shows to bring awareness to consumers in The Bahamas on various issues affecting the sector, such as consumer protection and content regulation. CBL suggested that more initiatives on other regulatory areas such as number portability would be beneficial to consumers.

### URCA's Response

URCA notes CBL's support of URCA's development of the Consumer Protection Regulations and other consumer initiatives designed at informing consumers on various issues regarding the ECS. Further, URCA notes CBL's recommendation on regulatory initiatives on the area of number portability. URCA will ensure that it continues to engage the sector on as many URCA initiatives as possible and notes that number portability, particularly mobile number portability, has been identified as a key focus area for 2015.

## **2.4 Preparation for Mobile Liberalisation**

### CBL's Response

CBL commented that it is pleased with URCA's plans to devote a significant part of its regulatory timetable towards consultations and developing regulatory initiatives necessary for the introduction of cellular mobile competition in the sector. CBL emphasised its support of the process and indicated that it looked forward to assisting URCA in developing a transparent, non-prescriptive body of regulation.

CBL suggested that there should be a "purposeful approach" to review and implementation of regulations as opposed to a "completion of tasks" approach. CBL commented that it hoped that URCA would learn from past experiences so that impending regulations would be more efficient and result in fewer problems so that the entire sector would benefit from liberalisation.

### BTC's Response

BTC particularly noted URCA's preparatory work in relation to the liberalisation of mobile services, and in particular the work related to the implementation of mobile number portability. BTC acknowledged that while mobile number portability is mainly intended to remove the switching costs for mobile customers as they move across operators, BTC argued that the net effect on consumer welfare as a result of mobile number portability is substantially reduced if consumers are not aware of termination charges associated with calling the mobile

network of the other operator. BTC highlighted that despite studies that show the benefits of mobile number portability, it believes that a number of these studies have overlooked the potential costs to consumers.

BTC further argued that URCA should commence work on mobile number portability once there is clarity with respect to the treatment of termination charges across operators following the introduction of mobile competition. BTC also recommended that URCA consider the associated set up costs for the implementation of mobile number portability. BTC stated that asymmetric mobile termination rates and high set up costs can negate the perceived benefits for consumers. BTC therefore argued that mobile number portability should be a consideration post liberalisation once consumers are aware of the costs associated with calling another operator's network and the associated charges of implementation.

### URCA's Response

URCA notes both CBL's and BTC's comments regarding URCA's preparatory work on mobile liberalisation. URCA particularly notes CBL's support of the process to introduce cellular competition in the Sector and its commitment to assisting URCA in developing transparent regulation. URCA notes BTC's concerns regarding the costs of mobile number portability to consumers as well as the associated costs for implementation. The introduction of mobile number portability in time for the start of competitive mobile services in The Bahamas has been consulted on and determined by URCA when it implemented Fixed Number Portability. BTC provided comments at the time of that consultation, and was also part of the Number Portability Working Group which assisted URCA in formulating the matters determined at the time. BTC will, of course, have an opportunity to submit its comments to URCA on the implementation process and will be fully involved in the working group to implement mobile number portability. However, to the extent that BTC seeks to revisit the issue of implementation of mobile number portability or the timing thereof, BTC would need to demonstrate that circumstances have changed materially from that anticipated at the time of URCA's several consultations and working group meetings during 2011 through 2013, so as to justify URCA revisiting the determinations already made.

## **2.5 Retail Price Regulation**

### CBL

CBL noted URCA's intention to introduce price cap regulations for CBL's retail broadband services as well as CBL's Pay TV packages. CBL commented that there appears to be a "naturally positive trend towards competition which is evident from the constant switching between CBL and BTC by consumers depending on the promotion in effect at the time. However, CBL expressed that there is a concern regarding the imposition of ex-ante regulations by URCA which will circumvent the development of effective competition in the sector. CBL

recommended that URCA focus on deregulation of the sector with a goal of the market being controlled by market forces.

CBL disagreed with URCA's statement that there is no imminent risk to its Pay TV product since BTC's introduction of Pay TV is forthcoming, based on recent newspaper reports. CBL therefore considers it inconsistent that URCA would find that the imposition of price caps are warranted on the basis that there is a real risk of excessive pricing especially in Pay TV services. CBL noted that the implementation of a price cap regime on CBL is "definitely a step in the wrong direction".

#### BTC's Response

BTC indicated that it has always stated that it is important in the promotion of competition that there is a relaxation of the Rules for mobile services. BTC noted that consumers will benefit from BTC's preparedness to respond to competition by offering lower prices. BTC argued that a review of the market for the provision of cellular mobile services should take precedence over mobile number portability.

#### URCA's Response

URCA acknowledges the above comments made by both operators. However, URCA noted in the Draft Annual Plan that a new retail pricing scheme based on price caps will be introduced in 2015. This proposal was based on extensive consultation with BTC and CBL on the market definitions, identification of market power, and proposed remedies during URCA's market review process conducted in 2014. The consultation is now closed with URCA issuing its final decision on 2 December 2014.<sup>3</sup> URCA will consult further with the industry on price cap design and implementation, prior to introducing those schemes.

URCA will also consult separately on revision of the Retail Pricing Rules for mobile services this year and will consider and respond to all comments received during the consultation period.

## **2.6 Universal Service**

#### CBL's Response

CBL expressed its support of URCA's work in the area of providing access to universal services to residents in The Bahamas. CBL noted that it is excited to launch its PRIME Local package in the first quarter of 2015 and sees this as a step in the right direction to providing affordable access for all consumers in The Bahamas. However, CBL opined that URCA's contemplated approach to compensation is "complex, costly to implement and relies too heavily on the unfair burden test". CBL particularly noted the absence of a consultation dedicated to Tariff Rebalancing on

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<sup>3</sup> <http://www.urcabahamas.bs/download/094452600.pdf>.



the timeline for consultations scheduled for 2015. CBL emphasized its strong opposition to the establishment of any USO financing mechanism that would contribute to any claimed access deficit by BTC that results from unbalanced tariffs. CBL therefore noted that a tariff rebalancing should be undertaken prior to finalising any process for USO funding. Further, CBL stated that it continues to lobby for a complete market review, especially as it relates to the access and provision of universal services on lesser populated islands. CBL commented that it hopes that the market review would result in the eradication of the duplication in the provision of services by both Universal Service Providers and prevent the wastage of valuable resources in the sector.

### URCA's Response

URCA notes CBL's comments in relation to USO. URCA disagrees with CBL's views that URCA's approach is "complex, costly to implement and relies too heavily on the unfair burden test". Having already consulted on the "Guidelines for the Calculation of Net Avoidable Costs of the Universal Services" for BTC (ECS 15/2014) and CBL (ECS 16/2014) in 2014, URCA is currently preparing the statement of results which will address CBL's concerns on costs associated with the implementation of universal services. URCA expects that the statement of results will be published mid-2015. URCA must also remind CBL that URCA's approach is consistent with the legislative framework for universal service in The Bahamas and the unfair burden test is widely employed by regulators in the EU and elsewhere. Further, URCA notes CBL's urging for a separate consultation devoted to tariff rebalancing in 2015. URCA contemplates that CBL's comments on tariff rebalancing in the context of the USO consultation is out of scope. URCA advises that CBL's concerns would be more appropriate for URCA's forthcoming consultation on the implementation of price caps for SMP operators. URCA acknowledges CBL's comment in relation to duplication in the provision of certain universal service by BTC and CBL.

## **2.7 Managing Radio Spectrum Effectively and Efficiently**

### BTC's Response

BTC suggested that URCA, as part of its revision to the National Spectrum Plan, should augment the definition of the designations of the Premium and Standard category spectrum bands, and that URCA should enhance the degree of spectrum harmonisation with neighbouring regulatory bodies. BTC stated that spectrum pricing should be consistent and should not exceed what the market or the ECS can bear. BTC commented that "onerous pricing can potentially stifle the growth of electronic communications services". BTC further suggested that there is a critical need for URCA to enhance and augment its spectrum monitoring resources and technology for all of the key island touristic markets since incidences of harmful spectrum interference have increased on these islands. BTC opined that harmful interference is extremely disruptive to the operators and customers, which has a negative impact on the Consumer Protection Regulations.

## URCA's Response

URCA notes BTC's comments regarding spectrum pricing. Having already consulted on the "Review of Radio Spectrum Pricing (ECS 04/2014)" in 2014, URCA intends to publish a revised Spectrum Fee Methodology, a revised Spectrum Fee Schedule and URCA's Final Determination on recovery of spectrum management costs, later this year. URCA would have already given consideration to the comments received by BTC and other stakeholders during this consultation period. As noted in its Draft Annual Plan, URCA has delayed the implementation of these items due to changes in the economic environment in The Bahamas and is currently anticipating implementing these items commencing 2016.

URCA agrees with BTC that harmful interference is disruptive to operators and consumers alike and intends to intensify its spectrum monitoring activities in 2015 to ensure that incidences of harmful interference are minimised.

## **2.8 Encouraging Competition**

### CBL's Response

CBL noted that despite the increase of staff members in 2014, there are still significant delays in responding to licensees competition complaints.

### BTC's Response

BTC noted the inordinate delay in addressing complaints lodged with URCA. BTC made specific reference to a complaint it lodged against CBL's subsidiary, Cable Media, regarding its refusal to carry BTC's advertisements of its broadband product. BTC further noted that the matter has not yet been adjudicated. BTC urged URCA to adjudicate matters in a timely manner. Moreover, BTC requested that URCA provide guidance as to how it intends to resolve disputes between licensees more quickly.

### URCA's Response

URCA notes CBL's and BTC's responses regarding the delays in addressing competition complaints. URCA assures CBL and BTC that it remains committed to ensuring that competition complaints are handled in an efficient manner and are resolved as quickly as possible. Furthermore, URCA notes that the resolution of competition complaints is also significantly delayed by the operators' failure in most instances to provide information in a timely manner and in a format that complies with the format prescribed in the competition guidelines. The accuracy and extent to which complainants have properly and fully specified the specific complaint in relation to allegations of anti-competitive behaviour also impacts the timeframe within which such complaints can be addressed by URCA. Finally, international experience indicates that the investigation of ex post competition investigations is a time consuming

activity, which is the reason why many matters are subject to ex ante regulation, so as to avoid the occurrence of anticompetitive behaviour where market positions suggest that such behaviour has a high risk of occurrence.

## **2.9 Building Regulatory Capacity and Human Capital**

### BTC's Response

BTC noted URCA's efforts to recruit, train and develop its employees in order to build capacity. BTC particularly praised URCA's introduction of a new summer internship program designed to expose local talent to employment opportunities with URCA. BTC further noted that in URCA's 2013 Annual Plan, URCA indicated that it intended to partner with other regulators to implement a short term work exchange program. BTC commented that such an initiative will be beneficial to the Sector.

BTC stated that there appears to be an inadequate number of technical professionals to effectively and efficiently address the expanding mandates of the communications sector. In that regard, BTC made particular reference to the challenges with the liberalisation of cellular mobile services.

BTC further noted that it was encouraged to see that initial steps are being made by URCA to address its critical human resource deficiency. However, BTC noted that there is a need for balance on the technical side to ensure that URCA is effective in regulating the Sector in light of the liberalisation of cellular mobile services.

### URCA's Response

URCA notes BTC's comments above and appreciates BTC's support of URCA's new summer internship program and URCA's current steps to address its human resource deficiency. URCA also notes BTC's comments regarding an inadequate number of technical professionals in the Sector. URCA is aware of the highly specialised skills required to effectively and efficiently regulate the Sector and is therefore committed to developing and training its staff as well as recruiting skilled professionals to ensure that the demands of the industry are adequately addressed.

## **2.10 Raising Public Awareness of URCA**

### BTC's Response

BTC commented that it agrees with URCA's promotion and distribution of the Consumer Protection Regulations. However, BTC indicated that it has discovered areas within the Regulations that are unclear and some that are unachievable. Therefore, BTC urged URCA to

consider revising the Regulations from a practical stand point so as to provide appropriate clarification to such areas.

Further, BTC agreed that complaints should be properly tracked, documented and resolved. BTC suggested that a complaints registry be formed which would outline particulars such as the nature of the complaint, time frames for resolution and steps taken by the licensee, including the compensation provided if applicable. BTC suggested that registered complaints would provide a road map for resolution of similar complaints.

Lastly, BTC urged URCA to revamp its website as it finds it difficult locating documents. It noted that it uses the website on a regular basis and opined that most consumers who would be new to the website may find it discouraging if they are unable to locate the assistance they seek.

#### URCA's Response

URCA notes BTC's comments regarding the Consumer Protection Regulations. While BTC has indicated that it is unclear on some aspects of the Regulations and that some areas are unachievable, URCA notes that BTC did not provide specific examples to support its claim. URCA also notes that BTC would have had the opportunity to voice its concerns and submit its comments on the framework during the consultation period in 2013. However, URCA notes that pursuant to Part 10.3, the Regulations are subject to review at least every three (3) years. URCA will advise the Sector once the review process has commenced for industry comment and feedback on the Regulations.

BTC also notes BTC's comments regarding a complaints registry. URCA notes that the Regulations provide for URCA to publish reports outlining in detail statistics on complaints received and their resolution as well as recurring complaints and the steps taken to resolve them. URCA currently collects this information and expects that this data will be published in the near future.

Finally, URCA is aware of the challenges with its website as expressed by BTC. Steps are currently being taken to revamp the URCA website so that it is more user-friendly. URCA anticipates that the website will be revamped during 2015.

### **3. CONCLUSION AND NEXT STEPS**

The publication of this Statement of Results document formally concludes the public consultation on URCA's Annual Plan for 2015. URCA once again thanks CBL and BTC for their feedback on the Draft Annual Plan. Having considered the comments, URCA notes that the responses do not warrant significant changes to the projects proposed in URCA's Annual Plan for 2015.

URCA on April 30, 2015 published its Final Annual Plan for 2015 on its website. URCA has also included its Annual Report for 2014 in the Annual Plan. Further, a public oral hearing will be scheduled at a later date to present and discuss the Annual Plan for 2015 and the Annual Report for 2014. At that time, URCA will answer questions from interested parties. The date and time for the public oral hearing will be published on URCA's website and in the media once finalised.