



# **GUIDELINES FOR CALCULATING THE NET COST OF THE UNIVERSAL SERVICE OBLIGATIONS FOR CABLE BAHAMAS LIMITED**

**STATEMENT OF RESULTS AND FINAL DECISION**

**ECS 11/2015**

**31 DECEMBER 2015**

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## 1. INTRODUCTION

The Utilities Regulation and Competition Authority (URCA) issues this Statement of Results pursuant to section 119(1) and Schedule 5 of the Communications Act, 2009 (Comms Act).<sup>1</sup> This Statement of Results forms part of the consultative process regarding the matter of how Cable Bahamas Limited (CBL) is to calculate the net cost of the universal service obligations (USOs) as contemplated in section 44(3) of the Comms Act.

The consultation for this subject was launched in August 2014, with the publication of URCA's consultation document "Guidelines for Calculating The Net Cost Of The Universal Service Obligations For Cable Bahamas Limited" [URCA document reference ECS 16/2014]<sup>2</sup> (CBL's NAC Guidelines).

Comments on the consultation document were duly forwarded by CBL on behalf of itself and its affiliates Caribbean Crossings Ltd. and Systems Resource Group Ltd. This Statement of Results provides a summary of the comments that were received from CBL along with URCA's responses to those comments and its final decisions. URCA wishes to thank CBL for its responses to the consultation document. A copy of CBL's response to ECS 16/2014 (including its responses to ECS 15/2014) can be downloaded from URCA's website at [www.urbahamas.bs](http://www.urbahamas.bs).

While URCA has sought to respond directly to comments and representations received during the consultation process, URCA expressly states that any failure by URCA to respond in this document to any issue raised by CBL does not necessarily signify agreement in whole or in part with said issue, that URCA has not considered the comment or that URCA considers the comment to be without merit. The publication of this Statement of Results brings to an end URCA's public engagement on the Guidelines for calculating the net avoidable cost (NAC) of the USOs for CBL and will result in the publication of the Final NAC Guidelines for CBL [ECS 12/2015].

### **STRUCTURE OF THE REMAINDER OF THIS DOCUMENT**

The format of the remainder of this document is as follows:

- |                  |   |
|------------------|---|
| <b>Section 2</b> | Summary of comments that were put forth by CBL along with responses from URCA and the final decisions                           |
| <b>Section 3</b> | Outline of the subsequent activities that will be undertaken by URCA as it relates to the Universal Service Obligations for CBL |

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<sup>1</sup> <http://www.urbahamas.bs/download/088554800.pdf>

<sup>2</sup> <http://www.urbahamas.bs/download/071879800.pdf>. URCA simultaneously issued a separate consultation document "Guidelines for Calculating The Net Cost Of The Universal Service Obligations For The Bahamas Telecommunications Company" [URCA document reference ECS 15/ 2014] in respect of the Bahamas Telecommunications Co. Ltd. (BTC).

## **2. RESPONSES TO THE CONSULTATION DOCUMENT**

In this Section, URCA summarises and responds to the substantive comments received on the consultation document, as follows:

- Section 2.1 - Summary of CBL's General Comments to the Consultation Document
- Section 2.2 - Summary of CBL's Comments on Specific Topics within Consultation Document [ECS 16/2014]

### **2.1 Summary of CBL's General Comments to the Consultation Document**

CBL indicated that the proposed Guidelines for calculating the net cost of the USO is complex in nature and will be costly to implement. In addition, CBL felt that the proposed approach involves numerous highly subjective elements inclusive of contemplated cost adjustments and the unfair burden test.

CBL noted that multiple disaggregated cost allocation methods were discussed in the consultation document even though none of those methods are currently in place. CBL further stated that those same cost allocation approaches were not described in any detail in the consultation document. CBL argued that putting the suggested disaggregated cost allocation methods in place could only be done at significant cost to CBL.

CBL however acknowledged that URCA appears to have left open the scope for a USO claimant to develop its own net cost approach that CBL considers is generally consistent with the intent of CBL's NAC Guidelines.

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

CBL's NAC Guidelines as put forth by URCA in ECS 16/2014 are indicative. CBL may very well determine the net cost of its USO using slightly different approaches that are sufficiently robust, transparent, verifiable and consistent with the principles which are set out in the Final NAC Guidelines for CBL [ECS 12/2015].

The consultation document stated that CBL's NAC Guidelines can be applied using either a historical cost accounting (HCA) or current cost accounting (CCA) approach. While CCA is recognised as being the superior method for depicting efficient costs, URCA acknowledges that CBL's cost accounting records are currently on an HCA basis. URCA is of the view that CBL should use the actual costs of providing the USO with adjustments made for efficiency and other factors as appropriate.

Finally, URCA wishes to state that the Guidelines were designed to provide a degree of flexibility to universal service providers (USPs). URCA proposes to review the Guidelines from time to time in order to take into account experience that will be gained following the implementation of the USO plans.

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

**The CBL NAC Guidelines as put forth by URCA are indicative. CBL may very well determine the net cost of its USO using slightly different approaches that are sufficiently robust, transparent, verifiable and consistent with the principles set out in the Final NAC Guidelines for CBL [ECS 12/2015].**

## **2.2 Summary of Comments to Specific Topics within the Consultation Document**

### **2.2.1 USO funding requirements**

In its response to ECS 12/2012, CBL suggested that “measures to keep to the absolute minimum funding necessary to support an identified, eligible USO funding requirement” be included as one of the tenets for the establishment of a USO scheme.

CBL concluded that an effective approach to address the proposed tenet would be to encourage the offering of USO specific services that differ from the generally available commercially-oriented services. In this way, CBL expects that target consumers will “self-select” the USO service offering which will negate the need to set eligibility criteria such as social assistance, being disabled, being over a certain age (elderly), etc. CBL stated that this type of approach would achieve USO objectives at a lower net cost than if USPs were required to price commercially-oriented services below cost. CBL proposed that the objective of USO-specific services should be to limit the number of customers or households with below-cost USO-specific services to a minimum by focussing on those in greatest need of financial assistance.

### **URCA's response**

URCA notes CBL's proposal for targeted USO-specific service. In principle, URCA does not disagree with this approach. However, URCA is unable to accept any targeted USO-specific service that is incompatible with the statutory framework for universal service in The Bahamas. This includes the parameters for universal service as specified in section 119(1) and Schedule 5 of the Comms Act, the Electronic Communications Sector Policy (2014)<sup>3</sup>, relevant licence conditions and regulatory or other measures issued by the URCA. URCA reminds CBL that it is the responsibility of the USP to indicate to URCA how the USP intends to fulfil its USOs. URCA will then review such proposals against the statutory framework for the universal service in question. URCA reserves the right to consult with

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<sup>3</sup> <http://www.urcabahamas.bs/download/090781500.pdf>

other licensees and the general public regarding such an offering in advance of a definitive approval of the USPs proposed approach.

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

**CBL's USO service offerings will be consulted on by URCA before being approved. Such USO service offerings must be compatible with the statutory framework and satisfy the parameters for universal service in The Bahamas as specified in section 119(1) and Schedule 5 of the Comms Act, the Electronic Communications Sector Policy (2014), relevant licence conditions and regulatory or other measures issued by the URCA.**

#### **2.2.2 Application of the unfair burden test**

CBL is of the opinion that the approval of a USO net cost funding requirement may impose an unfair burden on some or all other contributing operators. CBL requests that URCA consider the impact of any USO funding requirements on other operators who are also required to make contributions to the Universal Service Fund (USF).

CBL found the unfair financial burden test as proposed by URCA to be flawed. CBL feels that the test only considers the USP's financial situation but not the potential financial burden on other operators who contribute to the fund should the claim for USO funding be approved.

### **URCA's response and final decision**

The CBL NAC Guidelines as contemplated do in fact take into consideration the potential financial burden on other operators who contribute to the USF. The financial burden of contributions to the USF is limited to the percentage of revenue that will be remitted for the purposes of servicing the USOs. This approach is standard industry practice and supported by section 44(5) of the Comms Act. This approach also ensures that a licensee's contribution to the fund is proportionate, objective, fair and non-discriminatory.

#### **2.2.3 Intangible ubiquity benefit**

CBL felt that the proposed ubiquity related intangible benefit adjustment is based on a telephony precedent from an unspecified foreign jurisdiction. CBL further stated that no rationale or reference for the proposed net USO cost adjustment was provided by URCA with regard to CBL's USO-specific TV service.

CBL considers that, in its case, the proposed adjustment for ubiquity to be inappropriate and premature.

CBL posited that because its proposed 'Prime Local' USO TV package is priced below cost, there will be no economic/uneconomic islands.

CBL believes that Section 6.2 of ECS 16/2014 is not applicable to CBL and should be deleted. Alternatively, CBL suggests that if the Section is to remain, it should be amended to describe the intangible benefit in theoretical terms and left as a matter for possible consideration in CBL's case depending on the outcome of URCA's review of CBL's Prime Local application.<sup>4</sup>

### **URCA's response**

Intangible benefits are included due to the comparative advantage that a universal service provider (USP) may derive (e.g., lower costs as a result of higher volumes, higher revenues, better customer acquisition and retention). URCA considers that the inclusion of specific intangible benefits for the purposes of calculating net costs is relevant to USPs in any commercial market regardless of locale. The specific inclusion of benefits due to enhanced brand recognition/corporate reputation and ubiquity have been chosen from a list of other intangible benefits specifically because of their relevance to the Bahamian market and the direct applicability to the designation of USP.<sup>5</sup>

URCA reminds CBL that the NAC Guidelines for CBL apply to both CBL's USO pay TV and internet services. In addition, Section 6.2 of the Guidelines specifies the conditions that may give rise to ubiquity benefits in pay TV and/or internet service. It is the responsibility of the USP to demonstrate to URCA's satisfaction that a ubiquity benefit does not arise or is immaterial and to substantiate this within its submission to URCA. Accordingly, URCA disagrees with CBL's proposed amendment to the NAC Guidelines for CBL (and BTC).

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

**Consideration of the intangible benefits as identified by URCA in CBL's Final NAC Guidelines should be made by CBL when preparing net avoidable cost estimates for funding applications from the USF.**

#### **2.2.4 Other matters**

At Section 4 of its response, CBL contended that there were numerous discrepancies in terminology and general descriptive content between the proposed BTC NAC Guidelines versus the proposed CBL NAC Guidelines probably attributable to the different USO services of each USP. CBL requested URCA to ensure that all sections of the Final NAC Guidelines that are not service-specific would be harmonised as appropriate.

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<sup>4</sup> <http://www.urcabahamas.bs/download/021665500.pdf>

<sup>5</sup> See URCA's final decision under Section 4.25 of ECS 01/2013.

### **URCA's response**

Regarding the harmonisation of terminology and general descriptive content in the Final NAC Guidelines for BTC and CBL, URCA will endeavour to ensure that the terminology and general descriptive content in all sections of the Final NAC Guidelines for both BTC and CBL that are not service-specific are harmonised as much as possible and as is appropriate.

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

**URCA will endeavour to ensure that the terminology and general descriptive content in all sections of the Final NAC Guidelines for both BTC and CBL that are not service-specific are harmonised as much as possible and as is appropriate.**



### 3. NEXT STEPS

The following aspects of the universal service framework must now be developed by URCA:

- Establishment of a register of specified institutions
- Implementation plans for USO for BTC and CBL
- Guidelines for measuring the affordability of USO
- Consumer awareness of consumer rights under the Universal Service Obligations

The implementation plans and affordability guidelines will be developed in consultation with BTC and CBL as part of the ongoing development of the universal service framework. URCA continues to assess each USP's overall compliance with their existing statutory universal service obligations.