



REGULATION OF RETAIL PRICES FOR SMP OPERATORS - RULES

ECS 15/2010

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UTILITIES REGULATION & COMPETITION AUTHORITY

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Retail Price Regulation

1. The SMP operator shall act according to the rules set out below in order to be and remain compliant with any Retail Price Regulation obligation.
2. The detailed rules are specified in the following Sections.

Filing of Initial Prices

3. Within **thirty (30) business days** of URCA issuing the SMP operator with the Final Decision on its obligations under section 116(3)(c) of the Communications Act, 2009 (Comms Act), the operator shall file its existing prices for each retail product and service subject to retail price regulation¹ (hereinafter referred to as “Price Regulated Services”) with URCA along with the terms and conditions upon which those services are provided. Where the SMP operator offers a set of products or services together as a bundle or tied product, and one or more of those products in the bundle is offered on a stand alone basis as a Price Regulated Service the SMP operator must also provide the initial price filing information for the bundled or tied product.
4. The SMP operator shall at the same time file with URCA the volume of sales and revenues relating to each Price Regulated Service (or bundle including a Price Regulated Service) for the previous complete financial year, or such period for which the service has been provided , whichever is less.
5. For the avoidance of doubt, when undertaking its initial filing of **existing** prices, the SMP operator shall not be required to seek approval of its existing prices.

Investigations

6. In exercise of its powers to conduct inquiries or investigations under section 8(1)(j) of the Comms Act, URCA reserves the right to conduct an investigation into an SMP operator’s prices and terms and conditions for a Price Regulated Service on its own motion, without receiving a complaint from another party. This includes the right to conduct investigations into the prices and terms and conditions for Price Regulated Services in existence at the time when URCA issues the SMP operator with the Final Decision on its obligations.
7. Under the terms of section 9 of the Comms Act, URCA may request the SMP operator to provide information to URCA during such investigations. URCA shall state the purpose of the request, specify the information required and specify the time period within which the information is to be provided. Failure to provide timely and accurate information to URCA may lead to the imposition of a fine under section 109 of the Comms Act.

¹ See the obligations set out in the Final Decision on Obligations to be imposed on SMP operators - ECS 11/2010.

Approval Process

8. The SMP operator must obtain URCA's written approval before:
 - 8.1. introducing any changes to the prices of Price Regulated Services, including changes of a temporary nature;
 - 8.2. introducing any changes to non-price terms and conditions for Price Regulated Services that could be expected to affect either the effective price paid by consumers or the costs incurred by the SMP operator;
 - 8.3. introducing any new services; or
 - 8.4. withdrawing or discontinuing existing Price Regulated Services.
9. In all cases, the SMP operator must not advertise or announce publicly in any way its proposed price for a Price Regulated Service until it has received URCA's approval for that price, consistent with the procedure set out below.
10. The minimum required elements of the SMP operator's application, and the time period over which URCA will conduct its review and either grant or withhold its approval is dependent upon the type of price or service change sought by the SMP operator, as set out in the remainder of these rules.
11. With the exception of One Week Promotions and Full Length Promotions for Price Regulated Services, for which paragraph 11.1 shall not apply, URCA will follow the procedure laid out below in the remainder of paragraph 11, for reviewing price or service change applications for Price Regulated Services.
 - 11.1. Within **five (5) business days** of receiving an application, URCA shall contact the SMP operator in writing to acknowledge receipt of the application and either:
 - 11.1.1. Confirm that the application is complete (i.e., that it contains the minimum information required according to the requirements of the relevant section of these rules), the date upon which it was received by URCA, and that URCA shall review the application according to the procedures set out in these rules ; or
 - 11.1.2. Advise that the application is incomplete (i.e., that it does not contain the minimum information required). In this case, the application will be deemed not to have been submitted.
 - 11.2. Within the timeframes set out in the remainder of these rules for each form of price or service change application, URCA shall respond to the SMP operator in writing with one of the following:
 - A statement of no objection to the price or service change application;
 - A rejection of the application, including URCA's reasons for rejecting the application; or

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- In the case of proposed price increases, withdrawals and discontinuations of Price Regulated Services only, a notice that the application will go to public consultation and that therefore a final decision is withheld for the time being. URCA will consider whether there would be a need for public consultation based on factors such as the expected impact of the application, in terms of number of customers affected; possible alternative products available to customers; revenue impact on the operator; and expected impact on competition in the market place.

- 11.3. If a notice that the application must go to public consultation is issued, as soon as practicable URCA will allow the public a minimum of **thirty (30) days** to respond to the consultation, unless otherwise stated by URCA.
- 11.4. At any stage within the period of reviewing an application, URCA may give written notice to the SMP operator that it is suspending the review period, in order to request additional information or clarification from the SMP operator on the proposed price or service change. Following receipt of the requested additional information, the review period will resume from the point at which it was suspended.
- 11.5. If URCA does not respond in writing to the SMP operator within the timeframes described in these rules, the price or service change application is deemed approved.

Implementing the proposed price or service change

12. Upon receipt of URCA's written approval (or deemed approval) of its application, the SMP operator may implement the proposed price or service change as follows:
 - 12.1. In the event of a price increase (for either a Single Price Regulated Service, or a Price Regulated Bundle), the SMP operator must, within **thirty (30) calendar days** of the date of URCA's written approval, place a notice in at least one newspaper with national circulation of the operator's decision to implement the price increase, giving at least **fourteen (14) calendar days** notice of the price change. If this notice is not placed within the specified period, URCA's approval will be deemed to have lapsed and the SMP operator must submit a new application if it wishes to proceed with the price change.
 - 12.2. For all other price or service changes (including the introduction of new services deemed by URCA to be Price Regulated Services), if the implementation date differs from that set out in the corresponding application, the SMP operator shall notify URCA at least **five (5) calendar days** before the price or service change takes effect. If the price or service change does not take effect within **thirty (30) calendar days** of the date of URCA's written approval, URCA's approval will be deemed to have lapsed and the SMP operator must submit a new application if it wishes to proceed with the price or service change.
 - 12.3. When advertising Price Regulated Services, including Special Promotions, the SMP operator shall ensure that such advertising (in whatever form it takes) sets out the terms and conditions for the service, including any eligibility criteria for subscribing to the service.

Permanent Price Changes

13. The SMP operator must obtain URCA's approval before introducing any permanent changes to the prices of Price Regulated Services.²
14. The following terms shall apply to both price increases and decreases for single Price Regulated Services. The SMP operator shall obtain URCA's approval for changing the price of a bundled or tied product, where one or more elements of that bundle or tie is a Price Regulated Service, consistent with the procedure in paragraphs 34 to 42 of these rules.
15. The SMP operator shall submit to URCA an application for a permanent change in the price of a Price Regulated Service.
16. Such application shall include, at a minimum, the following:
 - 16.1. A description of the product or service for which the price change is being requested;
 - 16.2. Proposed effective date for the price change;
 - 16.3. Current prices for the service(s) in question;
 - 16.4. Proposed prices for the service(s) in question;
 - 16.5. Any proposed changes to the applicable terms and conditions that will result from the proposed price change;
 - 16.6. Commercial rationale for making the proposed change;
 - 16.7. Pricing principle applied in developing the proposed price (cost-based, market pricing, etc.);
 - 16.8. Data relevant to the proposed change, including the following:
 - 16.8.1. Volume of current and projected demand for the Price Regulated Service, where the projected demand should provide the SMP operator's forecast of demand over the following year;
 - 16.8.2. Number of existing subscribers or users that would be affected by the proposed price change;
 - 16.8.3. Relevant projected revenues for the service over the following year, and the actual level of revenues from the service over the preceding year;

² A permanent price change is one which does not fall within the definition of a Special Promotion (refer to para. 24).

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- 16.8.4. For the current year, data on the total cost of providing the service in question (showing separately network (wholesale) and downstream costs, and inclusive of the SMP operator's cost of capital).³
17. Where possible, cost data should be provided that satisfies the Accounting Separation and Cost Accounting Guidelines issued by URCA (ECS 12/2010 – Bahamas Telecommunications Company Ltd. and ECS 13/2010 – Cable Bahamas Ltd.).
18. In the absence of costing information that satisfies the Accounting Separation and Cost Accounting Guidelines, the SMP operator may provide URCA with other information to support its proposed price change including:
- Benchmark study of prices in comparable jurisdictions along with supporting information; and
 - Verifiable financial management information in respect of providing the service.
19. URCA reserves the right to request additional information from the SMP operator relating to the proposed price change.
20. The SMP operator must submit a declaration signed by an authorised officer confirming that its application complies with these rules, the Comms Act, its operating licence, the Sector Policy and any other relevant documents. This signed declaration must further state that the proposed price change is not anticompetitive and, in particular, that it:
- a. does not result in predatory pricing⁴; and
 - b. will not result in a margin squeeze⁵ on other operators.
21. To the extent possible, the declaration in paragraph 20 should be supported with evidence that satisfies the requirements set out in these rules, which should also be provided to URCA.
22. Where, the cost and revenue information provided by the SMP operator shows that the proposed price is below the cost the SMP operator incurs in providing the product, the SMP operator must provide a detailed justification to URCA for the proposed price. That is, the SMP operator must demonstrate that the proposed price is objectively justified, taking into account the benefits to

³ All references to cost of capital in this document refer to the cost of capital for SMP operators, as determined by URCA in ECS 23/2009

⁴ For information on the circumstances when predatory pricing occurs in relation to operators that have a dominant position (which are the same in relation to SMP operators) and the tests for predatory pricing, please consult URCA's competition guidelines on abuse of a dominant position.

⁵ For information on the circumstances where a margin squeeze occurs in relation to operators that have a dominant position (which are the same in relation to SMP operators) and the tests for margin squeeze, please consult URCA's competition guidelines on abuse of a dominant position.

consumers and showing that these outweigh any adverse effect of the price on competition in the relevant market.⁶

23. Consistent with the procedure set out in paragraph 11, URCA will respond to the SMP operator with its decision on the price application within **twenty (20) business days** of the date on which it received the application and which is notified by URCA to the SMP operator according to paragraph 11.

Special Offers or Discounts (“Special Promotions”)

24. Each of the following categories of price change is considered a Special Promotion.:

- 24.1. A special offer or discount applied to a Price Regulated Service and which is in place for no more than one calendar day (‘A Single Day Promotion’);
- 24.2. A special offer or discount applied to a Price Regulated Service and which is in place for a duration of more than one calendar day, but for no more than one calendar week (‘A One Week Promotion’);
- 24.3. A special offer or discount applied to a Price Regulated Service and which is in place for duration of more than one calendar week, but for no more than 90 calendar days (A ‘Full Length Promotion’).

25. The SMP operator may introduce no more than ten (10) Single Day Promotions during the course of a calendar year. At least **five (5) business days** before the Single Day Promotion is due to be launched, the SMP operator must, in writing, notify URCA of the proposed Single Day Promotion, and provide the following information to URCA:

- 25.1. a description of the Special Promotion;
- 25.2. the intended date on which the Special Promotion will apply;
- 25.3. the normal rates for the Price Regulated Service subject to the Special Promotion;
- 25.4. the rates applicable to the Special Promotion;
- 25.5. the terms and conditions applicable thereto; and
- 25.6. a declaration that the SMP operator has not already offered ten Single Day Promotions during the calendar year in question.

⁶ For example, and without prejudice to individual price change applications, an objective justification could include the price change being part of a longer term price rebalancing plan agreed with URCA.

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26. Upon receipt of this notification, URCA shall inform the SMP operator that it may proceed with the Single Day Promotion as it has set out.
 27. One Week Promotions and Full Length Promotions for Price Regulated Services (together, 'Regulated Special Promotions') shall only be offered with the written consent or approval of URCA, which shall be granted under paragraph 11.
 28. Notwithstanding the above, no Regulated Special Promotion shall be introduced if it is similar to any other Regulated Special Promotion that was available from the SMP operator at any time within the previous 120 calendar days. Further, URCA is unlikely to reject a Regulated Special Promotion that:
 - 28.1. is transparent, non-discriminatory and objectively justifiable; or
 - 28.2. would not have the effect of lessening competition in a relevant market.
 29. The SMP operator shall submit to URCA an application for any Regulated Special Promotion.
 30. Such an application, which in the case of a One Week Promotion must be submitted to URCA at least **five (5) business days** before its proposed launch date, and in the case of a Full Length Promotion, must be submitted to URCA at least **ten (10) business days** before its proposed launch date, shall include:
 - 30.1. a description of the Regulated Special Promotion, including a declaration that it is not similar to any other Regulated Special Promotion that was available from the SMP operator at any time within the previous 120 days;
 - 30.2. the price applicable to the Regulated Special Promotion, together with the current price for the service;
 - 30.3. the proposed launch date and duration of the Regulated Special Promotion;
 - 30.4. the commercial rationale for the proposed Regulated Special Promotion;
 - 30.5. the volume of current demand for the Price Regulated Service subject to the Regulated Special Promotion and an estimate of the impact of the promotion on demand;
 - 30.6. data on the total cost of providing the Price Regulated Service in question, showing separately network (wholesale) and downstream costs, and inclusive of the SMP operator's cost of capital; and
 - 30.7. the terms and conditions applicable thereto.
 31. Within **five (5) business days** of receiving an application for a One Week Promotion and **within ten (10) business days** of receiving an application for a Full Length Promotion, and consistent with the procedure set out in paragraph 11, URCA will respond to the SMP operator with its decision on the application.
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32. If URCA does not respond in writing to the SMP operator within the timeframes set out in paragraph 31, the price application is deemed approved. Following approval of the price application, the SMP operator may proceed with the Regulated Special Promotion according to paragraph 12.
 33. The SMP operator shall for a period of 180 days maintain all relevant volume data, revenue and marketing records pertaining to a Special Promotion and must provide these to URCA upon request.

Introducing or Changing the Price of Bundles of Price Regulated Services

34. The SMP operator may bundle, tie or offer new packages including Price Regulated Services as long as each service included in such a bundle, tied purchase or package is also available on an individual basis on reasonable terms and conditions.
35. As part of its initial filing under these rules, the SMP operator must submit information to URCA on those price bundles it offers at the time these rules come into force and which include at least one Price Regulated Service. The information required is set out in paragraphs 3 to 5 of these rules.
36. Any bundle, tied product or package that includes at least one Price Regulated Service shall be subject to price regulation (a "Price Regulated Bundle"). This means that the SMP operator must not, without the prior written approval of URCA, either change the price and/or terms and conditions of an existing Price Regulated Bundle, or introduce a new Price Regulated Bundle. For the avoidance of doubt, however, the SMP operator is not required to ensure that each service included in a Price Regulated Bundle existing at the date these rules come into force is available on a stand alone basis, unless otherwise directed to do so by URCA as part of other specific SMP obligations imposed on the operator.
37. The SMP operator shall, at least **thirty (30) business days** before the proposed effective date, submit to URCA an application for a price change to an existing Price Regulated Bundle, or an application to launch a new Price Regulated Bundle, as appropriate.
38. URCA will review such an application according to paragraph 11 above and will respond to the SMP operator with its decision on the price application within **thirty (30) business days** of the date on which it received the application and which is notified by URCA to the SMP operator under paragraph 11.
39. The SMP operator's application must demonstrate that the terms and conditions of the Price Regulated Bundle are not anti-competitive. For this purpose, the SMP operator must demonstrate that the Price Regulated Bundle can be replicated by other operators and that the price of the Price Regulated Bundle is not anti-competitive. In order to demonstrate the replicability of a Price Regulated Bundle, SMP operators should provide to URCA:
 - 39.1. A detailed description of the proposed bundle.
 - 39.2. A description of how other licensed operators could replicate the bundle, by showing how each component part of the Price Regulated Bundle can be provided by another operator (so that at least one other licensed operator can offer all the component parts of the Price

Regulated Bundle), using either its own network or wholesale products currently provided, or proposed, by the SMP operator.

40. Where an SMP operator is unable to demonstrate that a Price Regulated Bundle can be replicated, it must instead demonstrate that the Price Regulated Bundle can be objectively justified, in that the benefits to Bahamian consumers from it offering the bundle will significantly outweigh any potential consumer harm that the Price Regulated Bundle could create.
41. The SMP operator must also demonstrate that the proposed price for the Price Regulated Bundle is not anti-competitive and would not have the effect of lessening competition in a relevant market. In particular, it is important that the pricing of the bundle does not unfairly impact other providers of the individual products. To demonstrate this, the SMP operator must demonstrate that the 'incremental' price of each service in the bundle is at least equal to the cost of that service, including the SMP operator's cost of capital.
42. For these purposes, the SMP operator must provide cost information for the bundle and the individual services in the bundle consistent with the requirements of paragraphs 16 to 18.

Introduction of New Services

43. An SMP operator that proposes to offer a new service, that is, a service materially different to any existing service, shall at least **thirty (30) business days** before providing the new service, file with URCA:
 - 43.1. The proposed effective date for the introduction of the new service;
 - 43.2. A description (commercial and technical) and name of the new service, including the prices, terms and conditions applicable thereto;
 - 43.3. A description of the relevant product market to which the SMP operator believes the service belongs; and
 - 43.4. Forecast cost and revenue data (as listed in paragraph 16) for the new service, based, as applicable, on the SMP operator's business plan and regulatory accounts, demonstrating that the price of the new service is transparent and non-discriminatory and would not have the effect of lessening competition in a relevant market.
44. The SMP operator shall not repackage an existing service as a new service. If the new service is similar to an existing service, the SMP operator must explain the rationale for the launch of the service.
45. URCA shall, within **fifteen (15) business days** of the date on which it received the application and which is notified by URCA to the SMP operator according to paragraph 11, decide whether the service in question shall be a Price Regulated Service and notify the SMP operator in writing of its decision. If URCA concludes that the service shall not be a Price Regulated Service, the SMP operator will then be able to launch the new service.

46. If URCA concludes that the service in question shall be a Price Regulated Service, it shall continue its review and, no more than **thirty (30) business days** of the date on which it received the application and which is notified by URCA to the SMP operator according to paragraph 11, respond to the SMP operator in writing with one of the following:

46.1. A statement of no objection to the initial price; or

46.2. A rejection of the application, including URCA's reasons for rejecting the application.

47. For the avoidance of doubt, and without prejudice to paragraphs 45 and 46 above, the procedure set out in paragraph 11 shall also apply to the review of new services.

Withdrawal and Discontinuation of Price Regulated Services

48. The SMP operator shall not withdraw (to existing customers) and/or discontinue (to new customers) the provision of a Price Regulated Service without the prior written approval of URCA.⁷

49. No less than **ninety (90) calendar** days prior to the proposed effective date, the SMP operator shall submit to URCA its proposal to withdraw and/or discontinue the provision of a Price Regulated Service.

50. The proposal shall include information such as:

- number and profile of current customers/users,
- sales revenue,
- volume of demand and costs,
- the proposed process to notify affected customers; and
- any proposed substitutes for the service.

51. Where appropriate this data should be provided for the last 3 years, or, if less, such period for which the service was provided, to allow URCA to assess the likely impact on the market of the withdrawal/discontinuation of the service.

52. URCA shall review an application to withdraw and/or discontinue a Price Regulated Service consistent with the procedure described above in paragraph 11 and shall respond in writing to the SMP operator with its decision as per paragraph 11.2, within **twenty (20) business days** of the date on which it received the application and which is notified by URCA to the SMP operator according to paragraph 11.

⁷ For clarity, "withdraw" means to cease providing the service to existing or new customers; "discontinue" means to cease offering the service to new customers whilst still providing it to existing customers.

53. Following the receipt of URCA's written approval for the withdrawal or discontinuation of the Price Regulated Service, the SMP operator shall give its current users at least **sixty (60) calendar days'** notice of its decision to withdraw the provision of a Price Regulated Service. No less than **thirty (30) calendar days** from the effective date of the withdrawal or discontinuation, the SMP operator shall also publish, a notice of its decision to withdraw or discontinue the provision of a Price Regulated Service in one or more newspapers with national circulation.