



STATEMENT OF RESULTS

URCA DRAFT ANNUAL PLAN for 2016

ECS 15/2016

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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 year¹, and afford interested third parties the opportunity to comment on the draft Annual Plan prior to its final publication. In compliance with this statutory requirement, on December 31, 2015, URCA published its draft Annual Plan for 2016 (Draft Annual Plan) and invited comments from the general public. The deadline for submission of responses was January 29, 2016. On February 16, 2016, URCA had a stakeholders meeting to further discuss the Draft Annual Plan, including key projects planned by URCA for 2016, URCA's budget for 2016 and URCA's achievements in 2015. URCA was pleased with the level of attendance at the stakeholder meeting and considers the participation by those in attendance to be helpful to the further development of its Annual Plan.

URCA's Draft Annual Plan sets out in detail the programme of work URCA proposed to undertake for the forthcoming financial year commencing January 1, 2016 and ending on December 31, 2016.

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

- A Review of URCA's Achievements in 2015;
- URCA's Plan for 2016;
- An Evaluation of URCA's Effectiveness; and
- URCA's Draft Budget for 2016.

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.

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 subsidiaries² (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 develop the Draft Annual Plan and create an appropriate final Annual Plan for 2016.

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

² Caribbean Crossings Ltd. and Systems Resource Group Limited (SRG).

Structure of the Remainder of this Document

The remainder of this document is structured in the following way:

- Section 2 sets out a summary of responses received; and
- Section 3 presents URCA's conclusion and next steps.

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 2016. It highlighted its plan to proactively respond to competition despite current challenges faced in the sector and to take the necessary steps to remain viable to the Bahamian public which it has served for almost 50 years. BTC also noted its apprehension of the electronic communications sector (ECS) bearing the financial burden of regulating the energy sector, notwithstanding URCA's indication that there will be a separate budget for this new sector. BTC questioned whether a time management software had been purchased and implemented that allows staff to account for time spent on activities in either sector.

CBL's Response

CBL commented that it was pleased that progress was made in 2015 towards the advancement of the necessary guidelines and measures necessary to lay the groundwork for a highly competitive and robust sector. CBL commended URCA for the work it accomplished in the selection process for a second cellular mobile provider. CBL also expressed its confidence in URCA's ability to do what is necessary to complete the cellular mobile liberalisation process, considering that URCA has committed its full attention and dedication to meeting deadlines in preparation for the second cellular mobile entrant in The Bahamas.

CBL also noted that it was pleased that URCA concluded that its tower construction programme did not impact the fairness of the second cellular mobile provider selection process. CBL also commended URCA for completion of its work on the Infrastructure Sharing Regulations (ECS 05/2015) and Revisions to the Interconnection and Access Framework (ECS 08/2015).

In its general comments, CBL highlighted URCA's successful hosting of the Girls in ICT Day event in April 2015, as well as the impressive turn out by members of the public at URCA's Oral Hearing in May 2015.

CBL however questioned URCA's publication of the Draft Annual Plan for 2016 on New Year's Eve, which in its view resulted in lost response time for stakeholders. CBL therefore recommended that URCA review and improve the publication of the Draft Annual Plan in the future.

URCA's Response

URCA thanks BTC and CBL for their comments and continued support of URCA's work during the past year. URCA is sympathetic towards BTC's views on the likely financial impact of regulation of the energy sector on the ECS. Once URCA has finalised plans for regulating the energy sector, URCA will inform all stakeholders of proposed changes to its budget. URCA proposes to take the requisite measures to ensure that the cost of regulating each sector is accurately allotted to ensure that each sector contributes its proportionate share towards the cost of regulation.

URCA acknowledges that the Draft Annual Plan was published on December 31, 2015, New Year's Eve. URCA reminds CBL that the inputs for the Annual Plan are collated from various sources, many of which do not come to fruition until vary late in the year. URCA therefore considers it appropriate to publish the plan as late as possible, while meeting the statutory deadline. Further, URCA does not agree that response time to the Draft Annual Plan was lost as a result. URCA published the document by the statutory deadline, and allowed persons the statutory thirty calendar days for submission of responses. If requested, URCA would have favourably considered a request for an extension to the closing date for responses, as it has done in the past when such requests were made.

2.2 URCA's Strategic Goals

CBL's Response

CBL commented that URCA has not recognised the nexus between a heavily taxed sector, burdened further by a stringent, prescriptive ex-ante regulatory regime which overlooks the statutory guidelines for regulation relating to the reliance on market forces as a means of achieving electronic communications objectives. CBL expressed its disappointment with URCA's onerous ex-ante regulation in light of the world trend towards full deregulation of retail services. CBL commented that an ex-ante regulatory approach restricts flexibility and presents an on-going concern of operators' inability to respond to competitive pressures.

CBL further noted that URCA's work plan must be approached with fiscal restraint given the increasing cost of regulation for licensees as well as the importance of URCA's work time management, given the fact that approximately 75% of the 2015 work plan projects have been delayed and were carried over into the 2016 work plan. CBL further commented that URCA's intention to increase full time staff levels to 32 employees should be justified by the size of the electronic communications sector, increased costs to licensees and benchmarked against other countries with a similar sized electronic communications sector in order to avoid an oversized, rather than a lean and efficient organization.

CBL urged URCA to ensure the timely publication of its Statements of Results and Final Decisions in response to public consultations and in proximity to the response date of the

public consultations. CBL expressed that it is discouraging for operators to be required to meet stringent timelines in their public consultations responses and then have to wait unreasonable periods of time for URCA's final decision.

URCA's Response

URCA disagrees with CBL's views regarding the work conducted by URCA. URCA notes that its introduction of regulatory measures have always been consistent with the requirements of the Communications Act, 2009 (Comms Act), and have only been introduced after an analysis conducted by URCA of the section 5 principles of the Comms Act which shows that market forces are unlikely to achieve the electronic communications policy objectives. The market reviews undertaken by URCA to date do not support the wholesale removal of ex-ante regulation and in fact, URCA notes that the market positions of SMP players in key markets have remained strong and susceptible to anti-competitive behaviour. URCA receives numerous complaints from small operators of barriers to entry resulting from the behaviour of SMP operators, which suggests that ex ante regulation continues to be necessary. CBL should also understand that the ECS in The Bahamas is fairly unique so the approach taken elsewhere may not be an appropriate test for The Bahamas. In other countries, regulatory authorities have progressively removed ex-ante regulation where competition has emerged in monopoly markets. Therefore, the greater reliance on ex-post regulation in other markets is not a justification to remove or forbear from ex-ante regulation in The Bahamas.

URCA recognizes that a significant number of projects from last year were carried over into its 2016 work plan and notes that its continued efforts to source highly trained and experienced professionals will facilitate URCA's work plan moving forward which will also take into account future regulation of a new sector.

URCA is aware of the need for timely publication of its Statements of Results, Final Determinations and Final Decisions upon completion of consultation exercises. URCA will address this issue further in the Draft Public Consultation Procedure Guidelines, which will commence in the second trimester of 2016.

2.3 Mobile Liberalisation

CBL's Response

CBL noted that URCA's 2016 work plan has been dedicated to furthering the work of cellular mobile liberalisation. CBL encouraged URCA to continue with its work to ensure the second cellular mobile licensee enters into a sector in which regulatory and other measures are efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory. CBL expressed its desire for URCA to be able to commence the licensing process immediately and without delay once it is given the go ahead by the Government. CBL further highlighted URCA's commitments to the liberalisation process to

ensure the successful and quick roll out of services by the new licensee, and it applauded URCA for its intention to review the Retail Pricing Rules and Mobile Number Portability. CBL commented that as a new entrant to the mobile sector, it should not be hindered by restrictive retail price rules applicable to dominant providers. CBL also acknowledged that although mobile number portability has not been implemented simultaneously with the introduction of competition in other jurisdictions, BTC has had a monopoly in cellular mobile for a long period of time, and therefore mobile number portability is critical for competition in The Bahamas.

URCA's Response

URCA notes CBL's comments regarding URCA's preparatory work for cellular mobile liberalisation. URCA particularly notes CBL's support of the process to introduce cellular mobile competition and the work URCA has outlined for completion in 2016 relating to the same. URCA notes CBL's concern for the new cellular mobile entrant to not be hindered by retail price rules upon entry to the market. In response, URCA notes that the Retail Pricing Rules only apply to BTC as the SMP provider in mobile and will not apply to a non-SMP entrant to the mobile market. As it relates to CBL's concerns on mobile number portability, URCA intends to develop new rules and proposals on charging, which will need to be determined prior to implementation.

2.4 Encouraging Competition

BTC's Response

BTC expressed its concern with the speed at which competition complaints are addressed by URCA. BTC noted that addressing anti-competitive behaviour in a timely manner is important for fostering competition and the overall development of the sector. BTC stated that it is important for such matters to be addressed in a timely manner in order to mitigate loss of market share and that monetary compensation in some instances, may not be adequate. BTC referred specifically to the complaint it lodged in 2014 regarding CBL's denial of BTC's request for access to CBL's television platform to advertise BTC's products that compete directly with products that CBL offers to the public. BTC stated that it considers this to be a clear case of an entity with SMP abusing its position, and it noted its desire for URCA to address this matter post haste since in its view the Bahamian public should be aware of and should be able to compare products offered by the two providers.

BTC also noted URCA's views on the development of broadband services under the wholesale internet access regime. BTC noted that it would be useful for URCA to cite the performance measurement that lead to this conclusion, and it urged URCA to establish clear performance indicators to measure success when considering whether to introduce any regulatory measure. BTC further commented that any failure to subscribe to a particular wholesale service does not necessarily indicate failure of a market.

URCA's Response

URCA notes BTC's response regarding the delays in addressing competition complaints, and specifically acknowledges its competition complaint against CBL. While URCA agrees that such matters should be addressed and resolved in a timely fashion, URCA is cognisant that it is not unusual for ex-post competition investigations to be settled within several years. Furthermore, URCA maintains that significant delay to the resolution of such complaints is also attributable to the submission of incomplete information, and complainant's failure to properly establish the required components of anti-competitive behaviour. URCA is thereby required to ensure the accuracy and completeness of such complaints, prior to forming a view as to the merits of a complaint and taking necessary action. This is a time consuming activity and URCA notes that this also impacts the timeframe within which such complaints can be addressed by URCA.

BTC's comments with regard to wholesale broadband services are noted. Based on URCA's observations, URCA is aware that these services have not been subscribed to, and in fact, it has received several complaints from small operators on prices and restrictions placed on these services. Anecdotal evidence has suggested to URCA that these services might not be economically and/or technically feasible for new entrants to the market, and that in some cases, access is denied or delayed to an extent which renders the service a complete barrier to market entry. URCA assures stakeholders that it will conduct a proper analysis to inform its decision prior to introducing any regulatory or other measure.

2.5 Managing Radio Spectrum Effectively and Efficiently

BTC's Response

BTC commented that URCA should clarify the designation of the premium and standard spectrum category bands, and recommended that URCA pursue spectrum harmonization, where applicable, with neighbouring regulatory bodies. BTC further stated that there is a critical need for URCA to augment its spectrum monitoring resources and technology for the key tourist markets, namely New Providence, Grand Bahama, Abaco and Bimini. It noted its experience of increasing incidences of spectrum interference which has been extremely disruptive to customers and has negatively impacted the quality of service provided to its customers.

BTC noted the recent release of the Statement of Results for the Review of Radio Frequency Spectrum Pricing (ECS 01/2016), which it described as long overdue. BTC also expressed an expectation that the reasons for the inordinate delay have been given in the Statement of Results. Finally, BTC commented that the results of the review of spectrum pricing will signal the start of regularising the anomaly regarding the allocation of excessive amounts of 2.5 MHz spectrum to SRG.

URCA's Response

URCA notes BTC's comments regarding spectrum pricing. URCA notes that BTC's comments regarding the same have already been expressed by the operator and considered in the context of the spectrum consultation exercise. URCA noted in its Draft Annual Plan for 2015 (and reiterated in the Statement of Results) that implementation of the revised spectrum pricing regime would be delayed due to changes in the economic environment in The Bahamas, and that URCA anticipated implementation to commence in 2016.

URCA agrees with BTC that harmful interference is disruptive to operators and their customers and therefore undertake to heighten its spectrum monitoring activities in 2016 to minimise incidences of harmful interference.

2.6 URCA's Key Projects for 2016

BTC's Response

With regard to Significant Market Power (SMP) in Call Termination for the New Mobile Operator, BTC noted that it is important for all licensees that provide voice telephony to be declared as having SMP for termination of calls on their networks. Therefore, BTC indicated its intention to propose that termination rates are symmetrical.

BTC welcomed URCA's review of the existing Retail Pricing Rules for Mobile and noted that it looks forward to engaging with URCA on the revised Rules. BTC also expressed its anticipation of URCA's review of its RAIO, and noted that it looks forward to reaching a solution that is economically and technically feasible, as it relates to the requirements in respect of national roaming, interconnection of short messaging services, domestic mobile termination rate and a point of interconnection to the mobile switch.

BTC noted that URCA first published its Consultation Procedures Consultation Document in 2009, but that the consultation process was not completed. BTC commented that it looks forward to responding to the re-issued consultation document.

URCA's Response

URCA notes BTC's comments regarding some of URCA's key projects for 2016. URCA looks forward to receiving BTC's comments on the above-mentioned consultation documents once they have been published for public comment.

2.7 Building Regulatory Capacity and Human Capital

BTC's Response

BTC expressed its strong support for URCA's continued upskilling and recruitment efforts over the years. However, it articulated its concern that the vacancy of a non-executive member of the Board remains unfilled since Ms. Katherine Doehler's term expired, and it noted that the Chairman's tenure expired in July of 2015. BTC therefore requested to be updated on these matters.

CBL's Response

CBL highlighted the lack of formal announcement regarding the appointment of Ms. Doehler's replacement to the Board. It also noted that Mr. J.P. Morgan's seven-year term will expire on July 31, 2016. CBL urged URCA to begin to source a competent replacement pursuant to the requirements of the URCA Act.

URCA's Response

URCA notes BTC's comments in this regard and appreciates BTC's on-going support of URCA's recruitment and education initiatives. URCA also notes BTC's and CBL's comments regarding URCA Board members. URCA advises that Mrs. Cherise Cox-Nottage was appointed to the URCA Board, effective August 1, 2015. URCA will update its website to reflect this information. URCA notes comments received but reminds stakeholders that it has very limited involvement in the appointment of non-executive members to the Board.

2.8 URCA's Budget and Fees

BTC's Response

BTC noted in its Statement of Financial Position for 2014 that URCA has identified \$425,000.00 as immediately required, and \$1,324,989.00 as not immediately required. BTC expressed concern that approximately 20% of the 2014 budget may have been remitted in 2015 to the Consolidated Fund. Having noted that it pays a substantial Communications Fee to the government, BTC indicated its concern of indirectly paying another tax. It therefore suggested a KPI relating to this activity.

CBL's Response

CBL expressed its continued concern on the cost of regulation and the broad degree of discretion bestowed on URCA by the URCA Act on formulating the annual budget. CBL noted that a greater degree of transparency is essential in this regard. CBL further noted that URCA's

budget is too general and noted that licensees should be able to see the specific forecasts and actual spend under each area of each line item in the budget. It recommended, for example, that the singular line item for Conferences, Training and Travel should be broken down into three separate line items.

CBL repeated its concern with respect to the high costs associated with rent and utilities, and noted its expectation that the budgeted amount would presumably decrease in 2017 when the premises will include the offices of the electricity energy regulator, and that these costs will be shared among the two sectors.

CBL expressed significant concerns with the 57% increase in Conferences, Training and Travel in the 2016 budget. CBL further noted that while training is essential for a competent regulator, it questioned URCA's increasing involvement with international bodies such as the ITU, which requires extensive and expensive travel. In addition to longer absences from office, CBL also noted that this raises questions with regard to the appropriate presence of senior leadership in a six-year old regulatory body, which is still in its infancy. Recognizing that the hosting of the ITU's Global Symposium of Regulators (GSR) puts URCA and the country in the limelight, CBL noted that the questions must be asked at what cost to the sector, at what price to licensees and what is the material concern.

CBL highlighted its concern with the rising cost of regulation and the consistent increases in the annual URCA budget. CBL pointed out the various fees and government taxes applicable to operation in the sector and business in The Bahamas, generally, and noted that these speak to an apparent lack of concern by policymakers on the objective of re-investing in the provision of new services and passing on lower prices to consumers. CBL asserted that this is in conflict with the first two policy objectives found in section 4(a) of the Comms Act. CBL noted that the cost of regulation for licensees in the sector must be re-examined and significant adjustments must be made to the exorbitant cost of regulation.

CBL further noted the levying of fines to licensees in 2015 which has translated into cash injections to the Consolidated Fund, which could have instead been applied to opportunities to benefit consumers in the sector. CBL cautioned URCA to resist the temptation to further subsidize the Consolidated Fund in this manner.

URCA's Response

URCA notes BTC's concerns regarding the percentage of the annual budget that is remitted to the Consolidated Fund. URCA notes that it has already included a Finance KPI regarding forecasting accuracy, but will take BTC's recommendation into account moving forward.

CBL's comments regarding URCA's budget are noted by URCA. URCA will endeavour to separate categories of line items that CBL has identified as too general in future annual plans. URCA confirms for CBL that in accordance with the URCA Act, direct costs associated with the

regulation of the electricity sector will be allocated to that sector, while common costs will be shared proportionately between the ECS and the ES.

URCA has given careful consideration to CBL's comments regarding URCA's involvement in international telecommunications bodies. URCA reminds CBL that URCA's role at the ITU is as the delegated representative of the The Bahamas. URCA disagrees with CBL's views that hosting the GSR in 2017 is impractical and unnecessary. GSR is a global forum that allows leaders of national telecommunications regulatory authorities, policy makers and key ICT stakeholders to foster dialogue and identify best practices in the sector moving forward. URCA is of the view that this event will help to bring necessary and long overdue focus on ICTs in The Bahamas, both domestically and internationally, and looks forward to working together with the Government to host this conference next year.

URCA is cognisant of the level of fees and taxes applicable to licensees in order to conduct business in The Bahamas, and notes CBL's concerns regarding the same. URCA is also aware of the current financial challenges facing the country and the Government's mandate to address the national debt.

URCA notes CBL's comments regarding fines imposed on licensees in 2015 and injections to the government's Consolidated Fund. URCA considers the issue of fines on licensees for contraventions of the Comms Act or breaches of licence conditions, and the payment of funds into the Consolidated Fund, to be entirely separate and that it would be inappropriate to conflate the two issues in any way. URCA does not consider the impact of any fine on its financial position when imposing the fine, the quantum and form of such fines are imposed purely on the extent of the breach, and matters such as the impact on consumers and the ECS, and the need to deter future breaches. URCA reminds licensees that they have absolute control over their compliance or non-compliance with the Comms Act and licence conditions which would vitiate the need for the imposition of such fines by URCA.

2.9 Evaluating our Effectiveness

BTC's Response

BTC stated that URCA's establishment of KPIs to evaluate its effectiveness is noteworthy. BTC questioned whether URCA is able to objectively evaluate itself and suggested that URCA's effectiveness should be evaluated by its licensees. BTC also recommended that URCA should introduce a KPI that measures its timeliness in responding to complaints lodged by operators.

CBL's Response

CBL noted that it was constrained to comment on the lack of challenging key performance indicators that URCA has set for itself, and encouraged URCA to introduce KPIs which will strengthen URCA's performance. CBL also recommended that URCA establish a separate

process for industry feedback on URCA's performance other than generally in the Annual Plan response.

URCA's Response

BTC's and CBL's comments regarding URCA's KPIs are noted by URCA. While URCA has implemented its own KPIs to measure effectiveness, URCA is not opposed to licensees conducting their own evaluation for consideration by URCA. URCA welcomes stakeholder and industry feedback on URCA's performance at any time.

2.10 Review of the Electronic Communications Sector (ECS)

CBL

CBL noted that the Draft Annual Plan did not include a review of the ECS in 2015. CBL commented that such reviews are relied upon by stakeholders and are important to establish vital sector statistics and evaluations on the progress or lack thereof of the various markets in the sector. CBL stated that it anticipates a 2015 review of the ECS in URCA's 2015 Annual Report.

CBL further noted that this year marks the second year that no reference was made to the status of Fixed Number Portability (FNP) which was launched in December 2013. CBL stated that it would be useful for URCA to provide a status report including an evaluation of the relative success or otherwise of FNP in the sector.

URCA's Response

URCA acknowledges the above comments made by CBL. While URCA included a broad overview of its achievements in 2015 in the Draft Annual Report, URCA will include an overall review of the ECS in its 2015 Annual Report, as is customary. URCA will also endeavour to provide a status report of FNP in the 2015 Annual Report, as requested by CBL.

3. CONCLUSION AND NEXT STEPS

The publication of this Statement of Results document formally concludes the public consultation on URCA's Draft Annual Plan for 2016. Again, URCA thanks those who provided feedback on the Draft Annual Plan. With the exception of the above-mentioned changes, URCA has concluded that significant changes to the proposed Annual Plan were not warranted as a result of the comments received.

URCA's Final Annual Plan for 2016 was published on URCA's website on May 2, 2016. A public oral hearing will be scheduled at a later date to present and discuss the 2016 Annual Plan and the 2015 Annual Report. URCA will publish further details for the public oral hearing on its website and in the local media once finalised.