



CABLE BAHAMAS LIMITED'S APPLICATIONS:

- (1) FOR A PERMANENT PRICE CHANGE TO THE 'SUPERBASIC' SERVICE (*'REVTV Prime'* and *'REVTV Business Prime'*); AND**
- (2) TO INTRODUCE A NEW BASIC CABLE TELEVISION SERVICE (*'PRIME LOCAL'* or *'REVTV Prime Local'*)**

Consultation Document

ECS 18/2014

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1 Introduction

On 7 October 2014, the Utilities Regulation and Competition Authority ("URCA") received an Application from Cable Bahamas Ltd. ("CBL") for approval to permanently increase the current monthly price (\$30) for its residential 'SuperBasic' service (currently marketed as 'RETV Prime') by \$8. CBL also proposes to implement the same percentage increase (27%/ \$14) on the current monthly price (\$50) for commercial SuperBasic (currently marketed as 'RETV Business Prime'). These are the recurring charges residential and commercial customers must pay each month to remain connected to the service. The requested price increase translates into a monthly price of \$38 and \$64 respectively for the residential package and the equivalent commercial offering. The nature of the application is delineated further in Section 1.3.1 below.

URCA notes that CBL's request is similar in nature to CBL's application submitted in 2011 to permanently increase the monthly price of SuperBasic service, which for the reasons set out at Section 1.2 below was denied by URCA.

Concurrently with its current SuperBasic Application, CBL submitted a separate Application to introduce a "New Basic Television Service" (to be marketed as 'Prime Local' or 'RETV Prime Local'). As proposed by CBL, Prime Local will be a lower priced residential product comprising six channels, including ZNS Channel 13 and the Parliamentary Channel. Conditions associated with the service are delineated further in Section 1.3.2 below.

CBL is proposing to introduce this new service to fulfil the company's universal service obligation in basic television services. The current universal service regime is based on section 119 and Schedule 5 of the Communications Act ("Comms Act"), the Sector Policy and relevant measures issued by URCA including a decision published by URCA on 23 January, 2013 entitled "*Framework for the Clarification and Implementation of Existing Universal Service Obligations Under Section 119(1) and Schedule 5 of the Communications Act, 2009*".¹

CBL has indicated that it would like to implement the new Prime Local service and the SuperBasic price increase simultaneously on "1 November 2014 or as soon as possible thereafter". However, URCA notes that the 1 November 2014 date was infeasible having regard to the 7 October, 2014 date on which the application documents were filed with URCA, in the context of URCA's responsibility to consult with affected persons for a minimum period of thirty (30) calendar days. In addition, URCA also needs a reasonable period of time to properly assess CBL's application documents and supporting evidence in order to formulate its response and develop a consultation paper. In the event that URCA approves CBL's applications, the date for implementation will be included in URCA's Final Decision.

¹ <http://www.urbahamas.bs/download/012155400.pdf>.

Submitted along with both application documents is an Excel spreadsheet detailing the company's financial forecasts for the SuperBasic and New Basic TV Service.

Copies of the application documents submitted to URCA are exhibited as Annex A to this consultation paper. Interested persons should note that while the Annex comprises the bulk of CBL's original applications, the documents have been amended by CBL to remove any commercially sensitive information.

1.1 Overview of Cable Bahamas Ltd.'s Cable Television Infrastructure

Below, is a synopsis of the current technologies and/or network used by CBL to serve customers in various islands and specified communities throughout The Bahamas:

- A two-way digital cable TV network in the islands of **New Providence, Grand Bahama, Abaco, and parts of Eleuthera**. Based on the 2010 Population Census,² these are the most populated islands of The Bahamas representing approximately 91% of the total population of The Bahamas. On these islands, CBL provides multiple pay TV packages (e.g., SuperBasic and premium tier channels) to customers. CBL's present applications would apply only to consumers in these geographic areas.
- A one-way analogue cable TV network in the islands of **Bimini, Berry Islands, San Salvador, Great Inagua, Andros, Great Exuma, and Long Island**. Around 7% of the population live on these islands.³ As URCA understands it, CBL is physically unable to provide multiple TV packages to homes and commercial establishments in these areas due to technological constraint. On these islands, customers can only subscribe to a single SuperBasic package (i.e., 'RETV Prime' and 'RETV Business Prime') as CBL's higher tier packages are not available.
- An over-the-air broadcast service comprising six channels provided to residents in **specified Family Islands**⁴ free of charge. Provisioning of this multichannel broadcast service is based on a 2008 joint venture agreement between Bahamas Telecommunications Company Ltd. (BTC) and CBL. The service comprises ZNS Channel 13, Parliamentary Channel, ABC, NBC, Fox News, and CBS. It is also worth noting that CBL does not currently provide SuperBasic ('RETV Prime' and 'RETV Business Prime') or its premium tier channels to residents in specified Family Islands. Again, the applications would not be relevant to customers in specified Family islands.

² <http://statistics.bahamas.gov.bs/download/082103200.pdf>.

³ 2010 Census

⁴ Within the MoU, 'Specified Family Islands' include: (i) Arthur's Town and The Bright – Cat Island; (ii) Moores Island; (iii) Farmer's Cay, Exuma; (iv) Grand Cay, Abaco; (v) Guana Cay; (vi) North and South Andros; (vii) Crooked Island; (viii) Acklins Island; (ix) Mayaguana; (x) Grand Bahama Island - Sweetings Cay, Macleans Town, Water Cay, Walker's Cay and Grand Cay; (xi) Ragged Island; (xii) Rum Cay; (xiii) South Eleuthera; and (xiiii) Exuma (Mainland).

1.2 CBL's Previous SuperBasic Price Increase Application

In December 2011, CBL submitted its first pricing application to URCA under the new regulatory framework introduced in 2009.⁵ In that Application, CBL asked URCA to approve a 27% increase on the monthly price (\$30/residential and \$50/commercial) to the SuperBasic service. The requested price changes would have translated into a permanent price increase of \$8 and \$14 respectively on the monthly recurring fees for the residential package and the equivalent commercial offer. CBL's proposal in that application was to implement the rate increase in those geographic areas that have one-way and a two-way cable networks.

In support of the requested rate increase, CBL argued that the price of SuperBasic had remained unchanged since the service was first launched in 1994. CBL commenced that during the intervening period, the costs of provisioning the service had risen and thus CBL was not earning its regulated cost of capital on the service, as determined by URCA (and as measured on a fully allocated costs approach). As a result CBL argued the price increase was merited having regard to CBL's annual separated (regulatory) accounts, the Retail Pricing. CBL asserted that URCA's approval of the requested price increase would make the price of SuperBasic more cost reflective.

On February 11, 2013, URCA concluded its public consultation on the application by publishing ECS 02/2013,⁶ in which URCA rejected CBL's request.⁷ The basis for this rejection was because URCA found that CBL had not taken any step to comply (either in whole or in part) with its statutory obligation under section 119(1) and Schedule 5 of the Comms Act to provide "... affordable basic television services to all populated areas and specified institutions." In particular, URCA reasoned that:

"... approval of CBL's application ... would not further the objectives of the electronic communications policy in that it would reduce the extent to which persons in all regions in The Bahamas have affordable access to high quality networks and carriage services."

In the absence of compliance by CBL with its obligation to provide an affordable Basic Television Service, any increase to the price of the SuperBasic package would undoubtedly reduce the extent to which affordable television services are provided to persons in The Bahamas, at least in relation to those areas where SuperBasic is provided.

⁵ The Communications Act, the Utilities Regulation and Competition Authority's Act, and the Utilities Appeal Tribunal Act.

⁶ <http://www.urbahamas.bs/download/037408700.pdf>.

⁷ As the application gave rise to matters of public significance, prior to issuing a final decision on the matter, URCA consulted widely with persons whose rights or interests would have been materially adversely affected or prejudiced by the rate increase. The consultation paper (ECS 23/2012) setting out URCA's principal concerns and intent on CBL's rate increase was released for comment on September 4, 2012 with October 19, 2012 as the closing date for submission of written responses.

URCA's finding would be different if a package which met the requirements of the Basic Television Service (including affordability) were available in those areas where CBL offers its SuperBasic package."

At Section 7 of the 2013 Statement of Results, URCA reaffirmed its position that:

"...CBL's price application raises significant concerns for URCA. URCA's major concern is that, in the absence of compliance by CBL with the universal service obligations in the Comms Act to provide affordable basic television services to all populated areas and specified institutions in The Bahamas, there is no lower-priced, less inclusive package available to those existing or potential customers who are unlikely to afford an \$8 (27%) proposed price increase in the SuperBasic services or are deterred from subscribing to the service because of the proposed price increase/price level."

Given the above concerns raised by URCA, concurrently with its current SuperBasic Price Increase Application, CBL has now submitted a separate application to introduce an "affordable basic television service" (Basic USO-pay TV) to be marketed as 'Prime Local'.

Below, URCA provides further details on CBL's 2014 applications that are under consideration in this consultation.

1.3 Cable Bahamas Ltd.'s 2014 Applications

1.3.1 CBL's Current SuperBasic Application

Within its 7 October 2014 SuperBasic Application, CBL approval of a 27% increase on its SuperBasic price, the same as that which was proposed in its December 2011 request. The proposed rate change translates into a price increase of \$8 and \$14 per month for the residential package (currently marketed as 'RETV Prime') and the commercial option (currently marketed as 'RETV Business Prime') respectively. The monthly price of SuperBasic is the recurring subscription fee customers must pay to maintain an active account with the service provider on a going forward basis.⁸

As CBL described in the application document, 'SuperBasic' is a cable television service provided to customers in The Bahamas using terrestrial cable television networks and technologies. Essentially, SuperBasic is the minimum or entry-level product that customers must purchase prior to adding any of CBL's existing premium tier services. Whilst SuperBasic is offered on a standalone basis, customers also have the option to acquire the service as part of a bundle (internet and TV).⁹

⁸Customers may buy or rent a Set-Top Box (STB) from CBL. The rental fee for STB is a monthly recurring charge that customers must also pay to remain connected to the network.

⁹<https://www.cablebahamas.com/bundle/revonrevtv>.

Unlike the 2011 application, CBL in its current application proposes to implement the SuperBasic rate increase in those areas that have a two-way digital network only. That is, the four most populated islands in the Commonwealth of The Bahamas, namely New Providence, Grand Bahama, Abaco, and parts of Eleuthera. As mentioned above in combination, these four islands represent roughly 91% of the Bahamian population. Concurrent with implementation of the SuperBasic rate increase, CBL would introduce an 'affordable' multichannel package ('Prime Local') comprising ZNS, the Parliamentary Channel and four other channels (see Section 1.3.2 below) in these areas. CBL does not propose any changes to the existing rates in those geographic areas that have a one-way analogue platform. In other words, CBL has proposed to keep the monthly prices at \$30 and \$50 for residential and commercial services, respectively.

In setting out its justification for the price increase, CBL opined that without any price increase, the current 'revenue shortfall' in its "Basic TV Business" segment would continue to grow and jeopardize the economic viability of the service. CBL presented relevant financial information to demonstrate that it is earning less than its regulated rate of return on the service. CBL buttressed this presentation with additional supporting evidence (price benchmarking) from markets with similar characteristics to The Bahamas. It should be noted that CBL has argued in its Application that it still would have a 'revenue shortfall' after the price changes.

1.3.2 CBL's Prime Local Application

CBL accompanied its SuperBasic Application with a separate Application to introduce a "New Basic Television Service" (to be marketed as 'Prime Local' or 'RevTV Prime Local'). As per CBL's description, the Prime Local service will be an 'affordable' basic television service that is supposed to fulfil the pay television universal service obligation imposed on CBL. The current universal service regime is based on section 119(1)(e) and paragraphs (1)(b)(i) and (iii) and paragraph (2)(c) of Schedule 5 of the Comms Act, the Sector Policy and relevant measures issued by URCA including a decision published by URCA on 23 January, 2013 entitled "Framework for the Clarification and Implementation of Existing Universal Service Obligations Under Section 119(1) and Schedule 5 of the Communications Act, 2009".¹⁰ A fundamental purpose of the universal service is to provide customers with a connection to the television system at an affordable price upon request.

As such, Prime Local is a residential product and would be available only in areas covered by CBL's two-way digital network. These are the same communities that CBL proposes to introduce the SuperBasic price increase. Given the current status of CBL's networks (See Section 1.1 above), CBL is physically unable to provide multiple television packages (e.g., SuperBasic and premium tier channels or SuperBasic and Prime Local) in those geographic areas that have a one-way analogue network. For this reason, CBL is not proposing to impose the SuperBasic price increases in those geographic areas that have a one-way analogue network.

¹⁰ <http://www.urbahamas.bs/download/012155400.pdf>.

On a preliminary point and taking into account the rollout obligation for basic television services as per the statutory framework of the Comms Act, URCA notes that CBL's Prime Local application only represents an effort to partially comply with section 119(1)(e) and paragraph (1)(b)(i) and (iii) and paragraph (2)(c) of Schedule 5 of the Comms Act. However, further discussion on this point is at Section 4.4 below.

In the application, CBL disclosed that the non-pricing terms and conditions associated with the Prime Local product would be similar to SuperBasic. The only exception, according to CBL, is that Prime Local customers would be prevented from adding any of CBL's premium tier services on top of or in addition to their Prime Local subscription. CBL perceived that this restriction is necessary to avoid cannibalization of its SuperBasic revenue. Another feature of the service is that customers would have access to a fewer number of TV channels and less international and American based content.

In terms of pricing, at \$10 per month, the recurring costs of the service would be significantly less than the current \$30 charge applicable to CBL's minimum or entry-level residential service (*'RETV Prime'*) and the new \$38 price if the \$8 increase is granted. As to the economic basis for the \$10/month price, CBL advised that it is set on the principle of *'affordability'* rather than the principle of *'cost orientation'* of prices.

1.4 Consultation Process

URCA, as the entity responsible for the regulation of entry and competition in the electronic communications industry in accordance with the Comms Act and national policy, has wide-ranging powers in respect of licensing and regulation of converged networks and services. URCA's remit covers internet services, fixed and mobile telephony, radio and over-the-air broadcasting, pay television services (including cable television services) and the management of state assets (i.e., numbering, domain names, and radio frequency spectrum). One of URCA's core functions is to ensure that the regulation of licensees, specifically those with substantial market power, promotes the overall electronic communications policy objectives as established in section 4 of the Comms Act.

As provided for in the *"Regulation of Retail Prices for SMP operators – Rules"* (ECS 06/2014), CBL must first obtain URCA's written consent before introducing the price change and the USO-pay TV service described at Section 1.3.1 and Section 1.3.2 above. The submission of these applications to URCA on 7 October 2014 represents CBL's formal requests for URCA's review of the application documents and approval in accordance with established procedures.

URCA considers that under the terms of section 11(1) and section 13(1) of the Comms Act, the applications described at Section 1.3 above are of public significance and warrant a public consultation before URCA makes its decision. At section 13(1) of the Comms Act, a matter is of public significance *"... if it relates to electronic communications services or networks and can lead to one or more of the following –*

- (a) involve a major change in the activities carried on by URCA under this Act;*

- (b) *a significant impact on persons carrying on activities in those areas where URCA has functions under this Act; and*
- (c) *a significant impact on the general public in The Bahamas.”*

As such, and pursuant to section 11(1)(a), (b) and (c) of the Comms Act and paragraph 14.2.3 of the Retail Pricing Rules, URCA now seeks feedback from persons whose rights or interests may be materially adversely affected or prejudiced by CBL’s applications.

Taking the above into account and the interdependence between the applications, URCA considers it appropriate and efficient to issue a single consultation paper for the purpose of complying with sections 11 and 13(1) of the Comms Act.

Specifically, URCA is inviting feedback on any of the preliminary positions set forth by URCA in this document that respondents believe are contrary to relevant regulatory objectives, principles and/or obligations applicable to CBL. In any such comments, a respondent should set out clearly its reasoning for such objections, together with evidential information to substantiate its position.

URCA will issue a Statement of Results after careful consideration of all submissions and feedback received within the specified consultation period.

1.5 Objectives of the Consultation

This consultation document aims to:

- outline the legal and regulatory basis for URCA’s review of CBL’s application documents;
- set out the details of and supporting rationale for CBL’s applications;
- discuss URCA’s preliminary views on the applications and the basis for those views; and
- invite feedback from customers and the general public who would be most affected by CBL’s pricing proposals.

To ensure the widest possible public participation in the process, URCA proposes to supplement this public consultation paper with a town-hall meeting in New Providence and focus group meetings in the Family Islands to which the applications are applicable.

1.6 How to respond to this Consultation

Responses to this consultation should be submitted to URCA by 5 p.m. on or before 30 January, 2015. Where a respondent believes that any of the arguments set out by URCA in this document are contrary to the Comms Act, relevant guidelines, regulatory objectives and principles, and/or obligations applicable to CBL, the respondent should clearly set out their reasoning for such objections, together with evidential information to substantiate his or her position.

Persons must send their written responses or comments to URCA's Director of Policy and Regulation, either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau; or
- by mail to P.O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242) 393-0153; or
- by email, to info@urcabahamas.bs.

URCA reserves the right to make all responses available to the public by posting responses online on its website at www.urbahamas.bs. If a response is marked confidential, reasons should be given to facilitate evaluation by URCA of the request for confidentiality. URCA may, in its sole discretion, publish or refrain from publishing any document or submission.

1.7 The Remainder of this Document

The remainder of this document is structured as follows:

- Section 2 summarises the key issues arising in URCA's review of the application documents and Excel spreadsheet submitted by CBL;
- Section 3 provides an overview of the regulatory framework applicable to URCA's review of CBL's applications;
- Section 4 analyses CBL's application documents and Excel spreadsheet; and
- Section 5 sets out conclusion and next steps.

2 Summary of URCA's Analysis

To facilitate the task of respondents, URCA presents below a summary of the substantive issues arising from its evaluation of CBL's application documents and the Excel spreadsheet submitted to URCA.

In the context of URCA's SMP determination (ECS 06/2014)(Section 3.2 below) dated December 2, 2014, SuperBasic ('RETV Prime' and 'RETV Business Prime') and the new Prime Local universal service fall within the identified services market for pay TV and both are price regulated services.

In addition, CBL's new Prime Local product would be subject to the following *ex-ante* measures:

- the standard SMP obligations as set out in section 40(4) of the Comms Act and Part G of the standard Individual Operating Licence (IOL), especially Conditions 34, 35 and 36;
- any specific SMP obligations on accounting separation and cost accounting requirements as set out in regulatory and other measures issued by URCA;
- Price cap regulation;
- CBL is prohibited from introducing any new retail product bundles of Prime Local with any of its other retail services unless these bundles can be replicated by other providers; and
- Consumer Protection Regulation – ECS 19/2013.¹¹

Overall, URCA considers that CBL's application documents:

- are complete relative to the minimum informational and data requirements that must accompany a permanent price increase request for a single price regulated service ('SuperBasic'), and the introduction of a price regulated service that is considered a universal service ('Prime Local'); and
- do not give rise to any anti-competitive concerns, especially those specified at paragraph 19.10 of the Retail Pricing Rules (i.e., price squeezing, predatory pricing, and undue price discrimination).

URCA also considers the applications to be compatible with the Comms Act in the following respects:

- approval of the rate increase would make the price of SuperBasic more cost reflective;
- the rate increase would ensure that the service remains economically attractive on a going forward basis; and
- the proposals encourage and promote further investment in electronic communications networks and services.

Upon URCA's review of CBL's financial spreadsheet, URCA did not find any significant issues with the information provided by CBL and hence URCA does not consider that there are reasons in the cost

¹¹ <http://www.urcabahamas.bs/download/019062100.pdf>.

calculation to deny the request. The calculations are mathematically sound and the historical data is consistent with that reported in annual separated accounts submitted to URCA by CBL.

URCA notes CBL's statement that it still would have a 'revenue shortfall' after the price changes. URCA advises that in economic costing terms, the price of a product or service would not necessarily be expected to cover average costs, but rather cover marginal costs. As such, URCA considers the classification of the gap between operating income and costs (including Return on Capital Employed (RoCE)) as a 'revenue shortfall' to be slightly misleading. In this respect, URCA reiterates that in the event that it approves any pricing application, such approval cannot be construed as evidence of URCA accepting the existence of any such '*shortfall*', or that any other policy or regulatory measure is necessary or appropriate to offset any '*shortfall*'.

On the basis of the foregoing, URCA has come to the preliminary view that:

- CBL's price increase request is not excessive and is merited on the following grounds:
 - the supporting financial information is satisfactory and is not out of step with established methodologies and principles, as determined by URCA; and
 - the requested increase is comparable with the average price in markets having similar characteristics to The Bahamas.
 - CBL is presently not earning its regulated cost of capital on SuperBasic; and
 - 91% of the Bahamian population would have access to a lower-priced multichannel package ('*Prime Local*').
- URCA's rationale (recapped in Section 1.2 above) for denying CBL's 2011 SuperBasic rate increase would be impacted by CBL's proposal to introduce the Prime Local universal service package.

Specific to the 'Prime Local' Application, URCA notes that the proposed service is compatible with the Comms Act in the following respects:

- the introduction of the Prime Local fulfils, at least in part, a statutory requirement that mandates CBL to provide "*affordable basic television services to all populated areas and specified institutions*"; and
- its introduction would ensure that persons in The Bahamas with limited purchasing power would still have access to a minimum level of cable TV service upon request.

URCA, in its analysis of the application notes the following four considerations:

- 1) Whether the pricing for Prime Local is '*affordable*' for all;
- 2) The impact of the new Prime Local service offering on CBL's compliance with the rollout obligation for basic television services as per the Comms Act;
- 3) Whether or not CBL's proposal to prevent Prime Local customers from purchasing CBL's premium tier channels is proportionate; and

- 4) Whether the service, as proposed by CBL, is *"sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment."*

In relation to 1), and based on the analysis in Section 4.3 below, URCA's analysis leads to a negative preliminary finding primarily due to the initial upfront payments. URCA invites CBL to consider reduction of, or flexible payment options for, the initial upfront payments (installation and security deposit) that would make those payments less burdensome or more affordable for low-income households.

Regarding consideration 2), and based on the analysis in Section 4.4 below, URCA notes that CBL would only be in fulfillment of its TV USO to 91% of the Bahamian population, which would not equate to all populated areas. URCA is minded for the time being, to accept this partial fulfillment of CBL's TV USO, with the caveat that the TV USO would be made available in due course to all remaining populated areas consistent with the regulatory regime for universal service in The Bahamas. URCA will, subject to engagement with CBL and a public consultation process, establish the timeframes by which the "unserved" population in other Bahamian islands can expect to have access to a Basic Television Service in the future.

URCA's preliminary analysis of the points 3) and 4) suggests that CBL's proposals are not objectionable, however URCA is seeking comments from the public to inform its final decision on these points (Sections 4.6.3 and 4.6.4 below), to further inform its views.

List of Acronyms

CBL	Cable Bahamas Ltd.
ECS	Electronic Communications Sector
FAC	Fully Allocated Cost
IOL	Individual Operating Licence
IPTV	Internet Protocol Television
RoCE	Return on Capital Employed
STB	Set Top Box
SMP	Significant Market Power
URCA	Utilities Regulation and Competition Authority
UAT	Utilities Appeal Tribunal
USO	Universal Service Obligation
USP	Universal Service Provider
WACC	Weighted Average Cost of Capital

3 Legal and Regulatory Framework

In this Section, URCA discusses the main regulatory and other measures it must consider in this rate-setting proceeding:

- relevant requirements of the Comms Act, in particular URCA's power to determine that a licensee is an SMP (Significant Market Power) licensee and CBL's Universal Service Obligation (USO) in basic television services;
- URCA's Final Decisions/Determinations on SMP in communications markets, namely ECS 11/2010 "*Obligations Imposed on Operators with Significant Market Power (SMP)*",¹² and ECS 14/2014 "*Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009*"¹³;
- Part H of ECS 06/2014 "*Regulation of Retail Prices for SMP operators – Rules*" (formerly ECS 15/2010) on the introduction of new Price Regulated Services;
- relevant approval procedures and informational requirements in ECS 06/2014 for a permanent price change and introduction of new price regulated service which forms part of the universal service obligation; and
- any other relevant factors (including relevant licence condition).

These factors are described in further detail in Sections 3.1, 3.2, 3.3, 3.4 and 3.5 below.

3.1 Relevant Provisions of the Comms Act

The electronic communications policy objectives as specified in section 4 of the Comms Act, include, inter alia:

- (a) *to further the interests of consumers by promoting competition and in particular –*
 - (i) *to enhance the efficiency of the Bahamian electronic communications sector and the productivity of the Bahamian economy;*
 - (ii) *to promote investment and innovation in electronic communications networks and services;*
 - (iii) *to encourage, promote and enforce sustainable competition ...*
- (b) *to further the interests of persons in The Bahamas in relation to the electronic communications sector by –*
 - (i) *promoting affordable access to high quality networks and carriage services in all regions of The Bahamas; ...*
 - (v) *promoting availability of a wide range of content services which are of high quality."*

¹² <http://www.urbahamas.bs/download/013376800.pdf>.

¹³ <http://www.urbahamas.bs/download/091756400.pdf>.

Section 39 of the Comms Act places an obligation on URCA to conduct market analysis by determining whether one or more licensees have Significant Market Power (SMP) in identified communications services markets. Pursuant to section 40(1) of the Comms Act, URCA may impose specific conditions/remedies on SMP licensees including retail price regulation. Specific obligations imposed by URCA would be additional to the non-discretionary measures laid down at section 40(4) of the Comms Act and Part G¹⁴ of the Individual Operating Licence issued to CBL.

Section 119(1)(e), and Schedule 5, paragraphs (1)(b)(i) and (iii) of the Comms Act designate CBL as the Universal Service Provider (USP) in pay TV and requires the company to provide “*affordable basic television services to all populated areas and specified institutions.*” For the purpose of paragraph (2)(c) of Schedule 5 of the Comms Act, “*basic television services*” is defined as “*the provision of a multichannel television service comprising six channels, including ZNS Channel 13, and the Parliamentary channel.*” CBL is currently not providing basic TV services as defined under the USO of the Comms Act. However, URCA notes that CBL, pursuant to a 2008 MoU between BTC and CBL, currently provides a six (6) channel packages to residents in specified family islands free of charge.

3.2 URCA’s 2010 and 2014 Final SMP Determinations

In 2010, URCA published its first SMP determination under the new regulatory framework introduced in 2009. Within that determination paper (ECS 11/2010), CBL was confirmed as having SMP in the identified services market for pay TV and broadband internet and CBL’s entry-level pay TV product (i.e., SuperBasic) was designated a Price Regulated Service. Alongside the publication of this determination, URCA issued ECS 15/2010 “*Regulation of Retail Prices for SMP operators – Rules*” setting out the approval process and informational requirements governing price regulation of SuperBasic and other similarly classified retail services.¹⁵ At the urging of SMP operators (BTC and CBL), URCA comprehensively reviewed the Retail Pricing Rules in 2013. This resulted in ECS 15/2010 being amended and reissued as ECS 06/2014 on 16 April 2014.

URCA’s 2010 SMP determination has now been amended by URCA’s recent determination on SMP in key retail markets,¹⁶ i.e., ECS 14/2014 issued on December 2, 2014. In Table 1 below, URCA specifies the discretionary SMP conditions introduced in ECS 14/2014 that are now applicable to CBL as the dominant operator of pay TV services in The Bahamas.¹⁷ For the avoidance of doubt, the service (SuperBasic) that

¹⁴ In particular Conditions 34, 35, and 36.

¹⁵ Including BTC’s fixed voice services, and mobile voice and mobile data.

¹⁶ Fixed voice telephony, broadband services, business data connectivity services (national and international), and pay TV. The mobile market was excluded from assessment because the market was closed to competitive entry.

¹⁷ URCA found that CBL continues to enjoy a position of economic strength in pay TV services which gives the company the ability to behave to an appreciable extent independently of competitors, consumers and subscribers. Further, it was determined that CBL’s existing pay TV offerings (currently marketed as REVTV Prime/Residential SuperBasic, Prime Select, Prime Plus and Prime Extra) should be subject to retail price regulation.

is the subject of CBL’s current price increase application falls within the relevant pay TV market and is price regulated.

A new pricing scheme based on price caps is included in the package of remedies. The overall objective of these *ex-ante* conditions or remedies is ultimately to produce benefits for end users by making retail markets competitive on a sustainable basis. However, in view of the importance of further industry engagement on the design and implementation of the price cap remedy, URCA determined that, for the intermediate term, it would not process any applications by CBL for price increases for its retail pay television services that have not been notified to URCA prior to the publication date of ECS 14/2014.¹⁸ As CBL's application documents were received prior to publication of ECS 14/2014, processing of those applications is not precluded by this restriction.

Table 1: SMP Obligations/Conditions in Retail Pay TV Services

Geographic Market	Relevant Product Market	SMP Obligations
National	Retail – Pay TV Services Access to pay TV content provided over a cable TV and terrestrial network infrastructure.	<ul style="list-style-type: none"> • Price cap regulation for CBL’s access and content pay TV packages (i.e., those currently marketed as REVTV Prime, Prime Select, Prime Plus and Prime Extra). • CBL shall not introduce any new retail product bundles of pay TV services with any other of its retail services, unless these bundles can be replicated by other providers. • Standard/non-discretionary SMP Obligations under section 40(4) of the Comms Act and Part G¹⁹ of the Individual Operating Licence issued to CBL. • Develop separated accounts in accordance with URCA’s Accounting Separation Guidelines.

3.3 Introduction of New Price Regulated Services

In the context of this rate-setting exercise, URCA considers that the residential Prime Local universal service qualifies as a **new Single Price Regulated Service that forms part of universal service obligation**. URCA's reading of CBL's application documents suggests to URCA that CBL is similarly of this view. Below and for the purpose of complying with the Comms Act and to aid transparency, URCA explains the basis for its position.

As a first step, URCA notes CBL's reason for introducing the Prime Local service, i.e., to fulfil the pay television universal service obligation imposed on CBL at section 119(1)(e) and paragraphs (1)(b)(i) and

¹⁹ In particular Conditions 34, 35, and 36.

(iii) and paragraph (2)(c) of Schedule 5 of the Comms Act. URCA notes that the Prime Local service has not been previously commercialized by CBL and CBL's acknowledgement that introduction of the service would not significantly alter any of the terms and conditions of an existing service. Although Prime Local would not be offered as part of a service bundle, customers would have the freedom to purchase CBL's REVOICE and/or broadband internet on a standalone basis.

URCA has also compared key features of the Prime Local product against the other characteristics of a New Service described in Part H of the Retail Pricing Rules. In particular, paragraph 39 of the Pricing Rules stipulates that a New Service is:

"... a service provided by an SMP operator in a Price Regulated Market which is materially different in features, quality and/or attributes to any existing service of the SMP operator resulting from the addition of a service offering or changes in the service concept that allow for the New Service offering to be made available."

URCA's conclusion is that the Prime Local service is materially different to any existing pay TV offerings available from CBL. In that, key features and/or attributes of the Prime Local product are different from any existing TV packages available from CBL.²⁰ As an example, Prime Local subscribers would receive a fewer number (6) of television channels relative to SuperBasic. CBL has excluded major international (BBC) and/or American based cable networks (e.g., NBC, ABC, Fox News, or CBS) from the Prime Local channel lineup. CBL has also proposed to restrict Prime Local access to any of CBL's premium tier services (such as HBO and Showtime) or access pay-per-view and video-on-demand services on top of or in addition to their Prime Local subscription. To access premium tier services, customers would have to first upgrade from Prime Local to the higher-priced SuperBasic service.

In addition to the above, URCA's knowledge of CBL's cable television infrastructure suggests to URCA that implementation of the Prime Local service would rely on the same access and distribution systems used by CBL in the provisioning of its existing products (regulated and unregulated). Furthermore, it appears to URCA that in the context of the proposed SuperBasic rate increase, the Prime Local universal service would represent the most affordable means for a less affluent population segment in The Bahamas to gain access to a minimum level of pay television services.

Taking the above into consideration, URCA confirms that the Prime Local universal service falls within the identified services market for pay TV and is susceptible to retail price regulation. Given URCA's preliminary finding and for the avoidance of doubt, CBL's new Prime Local product would be subject to the following *ex-ante* measures:

- the standard SMP obligations as set out in section 40(4) of the Comms Act and Part G of the standard IOL, especially Conditions 34, 35 and 36;
- any specific SMP obligations on accounting separation and cost accounting requirements as set out in regulatory and other measures issued by URCA;

²⁰Example, REVTV PRIME, PRIME Select, PRIME Plus and PRIME Extra.

- price cap regulation; and
- CBL is prohibited from introducing any new retail product bundles of Prime Local with any of its other retail services unless these bundles can be replicated by other providers; and
- Consumer Protection Regulation – ECS 19/2013.²¹

3.4 Retail Pricing Rules

Within ECS 06/2014 are the general informational requirements and approval procedures for **permanent price changes for single price regulated services**, special promotions, withdrawal or discontinuation of price regulated services, and **introduction of new price regulated universal services**. In particular:

- An SMP licensee must first obtain URCA’s written consent before introducing any full-length promotions or permanent price changes to a price regulated service. Such an application must be made in accordance with the procedures defined in the Retail Pricing Rules that include a requirement for the SMP licensee to demonstrate, inter alia, the commercial rationale for the price change; and that any proposed price change is not anti-competitive.²²
- URCA’s written consent is also required before the SMP licensee can withdraw or discontinue provisioning of a price regulated service.²³
- URCA’s written consent is required before the SMP licensee introduce a new universal service that is subject to retail price regulation.
- When reviewing an application for a price regulated universal service, a key consideration for URCA is the affordability of the proposed price.²⁴

Overall, the framework aims to protect consumers from monopolistic or excessive pricing; and to militate against SMP licensees behaving anti-competitively to the detriment of emerging competition in the more contestable segments of the industry.

3.5 Any Other Factors

URCA’s considers that in addition to the above, other factors relevant to the current proceeding include the following:

- The requirement in Condition 31.2 of the Individual Operating Licence that *“Unless URCA consents otherwise, Licensee shall provide the Universal Services referred to in Condition 31.1 on the basis of uniform prices throughout The Bahamas.”*

²¹ <http://www.urbahamas.bs/download/019062100.pdf>.

²² Part E of the Pricing Rules.

²³ Part J of the Pricing Rules.

²⁴ Part K of the Pricing Rules.

- Section 4.9 of ECS 01/2013, wherein URCA stated that:²⁵

“CBL is to select the additional four channels under the condition that these four additional channels must be sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment.

... a Basic Television Services package containing additional channels ... is not necessarily intended to consist of the provisioning of exclusively Bahamian content or require that the additional channels have the same characteristics as the Broadcasting Corporation of The Bahamas.”

²⁵*“Framework for the Clarification and Implementation of Existing Universal Service Obligations Under Section 119(1) and Schedule 5 of the Communications Act, 2009”.*

4 URCA's Analysis of CBL's Applications

In this analysis Section of the document, URCA:

- assesses the completeness of CBL's application documents and Excel spreadsheet;
- examines the financial analysis contained in CBL's applications;
- assesses the affordability of the Prime Local universal service;
- outlines its views on whether CBL offering the Prime Local service will be complying with the pay TV rollout obligations of the Comms Act; and
- addresses any other issues arising in CBL's application documents.

4.1 Completeness of CBL's Applications

URCA must first determine the completeness of CBL's application documents against the informational and data requirements specified in ECS 06/2014. As such, URCA sets out below the findings of its completeness review of the SuperBasic Price Increase Application, followed by a similar review of the Prime Local Application.

4.1.1 The 'SuperBasic' Price Increase Application

As this application is for a permanent price increase for a Single Price Regulated Service, paragraph 19 of the Retail Pricing Rules sets out the minimum information that an application must include. In the process of this completeness review, URCA has checked several elements of the SuperBasic Application and CBL's Excel spreadsheet and is satisfied that CBL's request is complete regarding the minimum informational and data requirements. In particular, CBL:

- (i) Described the 'SuperBasic' service as a terrestrial cable TV product provided to customers in The Bahamas. Essentially, SuperBasic is the minimum or entry-level service that customers must have prior to adding any of CBL's premium tier services (e.g., video-on-demand and pay-per-view) on top of or in addition to their SuperBasic subscription.
- (ii) Proposed to implement the SuperBasic price increase on the islands of New Providence, Abaco, Grand Bahama and parts of Eleuthera where CBL operates a two-way digital cable network. Simultaneous with the price increase, CBL would introduce an '*affordable*' lower priced multichannel residential service to be marketed as '*Prime Local*' in these areas.
- (iii) Stated that the current monthly price for:
 - residential subscribers is \$30 plus additional one-off charges for installation (\$40), transfer/reconnection (\$50), late payment fee (\$5.50) and single security deposit (\$100).
 - commercial subscribers is \$50 plus additional one-off charges for installation (\$50), transfer/reconnection (\$50), late payment fee (\$5.50) and single security deposit (\$1,000).

- (iv) Proposed an \$8 increase on the monthly price of the residential package and \$14 for the commercial package which would mean prices of \$38 and \$64 per month respectively for residential and commercial customers.
- (v) Stated that the existing non-price features for the service will remain unchanged.
- (vi) Explained that for 2013, the revenue shortfall in its Basic TV business segment is substantial and absent any price increase, the deficit will continue to expand in the coming years and jeopardize the economic viability of the service. As to the commercial rationale for the price change, CBL noted that the price increase would more closely align the revenues and fully allocated costs (inclusive of the WACC, as determined by URCA) associated with the provisioning the service.
- (vii) Stated that the economic principle underpinning the requested price increase is that the service price should be cost-based, reiterating that SuperBasic pricing should be more closely aligned with CBL's fully allocated costs of provisioning the service, including CBL's regulated cost of capital.
- (viii) Presented current and its own forecast of the demand for the underlying SuperBasic services, including:
 - actual demand for 2012 and 2013, current demand forecast for 2014 and demand forecast for 2015 and 2016;
 - number of existing subscribers likely to be impacted by the requested price increase for the period 2015 and 2016;
 - projected revenues for the underlying services for the period 2014, 2015 and 2016 along with the actual figures for 2012, and 2013; and
 - its estimate of the total cost of providing SuperBasic based on URCA's Final Accounting Separation and Cost Accounting Guidelines for CBL, inclusive of CBL's cost of capital.
- (ix) Declared that the application does not give rise to any anti-competitive concerns, including those noted at paragraph 19.10 of the Retail Pricing Rules (see Section 4.6.2 below on URCA's review of relevant economic tests).

4.1.2 The 'Prime Local' Service Application

As the Prime Local Application is for the approval to introduce a new **Single Price Regulated Service that forms part of CBL's universal service obligation**, paragraph 19 of Part E and Part K of the Retail Pricing Rules provide the basis for URCA's completeness check. URCA, having now reviewed the Application against these requirements is satisfied that the Prime Local Application and CBL's Excel spreadsheet are complete with regard to the informational and data requirements that must accompany this type of application. In particular, CBL:

- (i) Described the Prime Local service as a new basic TV product that would provide residential customers on the islands of New Providence, Abaco, Grand Bahama, and parts of Eleuthera with access to the six (6) diverse and informative TV channels described in Table 2:

Table 2: Prime Local Channel Inclusions

Channel	Classification	Description
ZNS Channel 13	Local	The national TV and public service broadcaster operated by the state owned Broadcasting Corporation of The Bahamas. ZNS TV, is now available in HD, produces programming for the entire family, from daily local news from around The Bahamas, to community oriented shows, weekly arts and entertainment and other cultural shows, religious and inspirational shows, youth and educational programs. ZNS carries major sporting events such as the Olympics, the Commonwealth Games and CARIFTA. It also broadcasts local sporting events. Movies and prime time US programming rounds out the offering.
Parliamentary Channel (Channel 40)	Local	This channel provides access to all the proceedings of the legislative bodies of The Commonwealth of The Bahamas. It broadcasts live and recorded coverage of the House of Assembly and the Senate and the parliamentary committees thus allowing all citizens to participate in current and national issues debated.
CALA Weather	Weather	A 24/7 weather channel that provides up to the minute weather information on more than 200 major television stations around the world. The channel's hourly and minute by minute forecasts provides superior accuracy for nearly 3 million locations worldwide, with customized content and engaging video presentations available on smart phones, tablets, free wired and mobile internet sites. CalaWeather also provides up to the minute local weather conditions and showcases the weather maps for the entire Bahamas and the surrounding areas.
Bahamian Christian Network (Channel 55)	Local Religious	This channel is the first and only 24/7 TV station (all christian) located in The Bahamas. BCN is based in Abaco and provides religious programmes showcasing various denominations, outreach programmes, skits, music videos, television shows etc. In addition to covering activities in Nassau, BCN's content includes activities throughout the islands of The Bahamas as well as programming from the United States.
Jones Communications Network (Channel 14)	Local	A subsidiary of the Jones Communications Network (JCN). It is the home of The Platform, Bahamian Idol, Supermodel 101 Dialogue, Inside View, People Helping People, and Jones & Co. JCN offers daily programming covering news, sports and entertainment. The channel broadcasts headlines at 5:00 pm and the full news at 6:30 pm. The daily lineup also includes new segments with local and international guests on the popular show Jones & Co.
PBS - WPBT2 (Channel 13)	USA	This channel broadens the boundaries of communication, and is an agent for innovation and growth; culturally, socially, economically and historically. The network is a vibrant force in the South Florida community that entertains, enlightens, and educates with highlights from the local theatrical and concerts scenes. WPBT2 (PBS) is community-supported and takes pride in reflecting the diversity of the region, home and work life.

CBL added that subscribers would not be allowed to purchase digital premium tier services on top of or in addition to their Prime Local subscriptions.

- (ii) Stated that the introduction of the Prime Local Service seeks to fulfill CBL's universal service pay TV obligation under section 119(1) and Schedule 5 of the Comms Act. As such, the Prime Local service is a lower priced residential product that would be available to customers who wish to take a more 'affordable' pay TV service than SuperBasic.
- (iii) Set the price for the service at \$10/month. However, there are other related charges that would be applicable to new customers including the one-off charges for installation (\$40) and security deposit (\$20). CBL charges a transfer/reconnection fee (\$40) and a late payment fee (\$5.50). Customers may purchase or rent a STB from CBL at current prices.
- (iv) Commented that the service would be offered under the same non-price terms and conditions as SuperBasic (except that subscribers would be unable to access any of CBL's premium tier services on top of or in addition to Prime Local).
- (v) Explained that the proposed price is set on the principle of "affordability", rather than the principle of 'cost-orientation' of prices. As such, CBL states that the price point is significantly below the projected costs of provisioning the service, with CBL projecting it would earn a negative rate of return on the service. CBL asserted that at \$10, the annualized price (\$120) of the service relative to median income ranges between 3.9% for the lowest household income decile and 0.1% for the highest household income decile (see Section 4.3 below on affordability).
- (vi) Presented current demand and its own forecast of the demand for the underlying service, including:
 - demand forecast for 2015 and 2016;
 - number of existing subscribers likely to be impacted by the introduction of the new service;
 - projected revenues for the service for the period 2014, 2015 and 2016; and
 - relevant costing data based on URCA's "Final Accounting Separation and Cost Accounting Guidelines for CBL"²⁶ and supplemented by regional benchmarks.
- (vii) Declared that the application does not give rise to any anti-competitive concerns, including those noted at paragraph 19.10 of the Retail Pricing Rules (see Section 4.6.2 below on relevant economic tests).

4.2 Financial Analysis in CBL's Applications

URCA now summarizes the findings from its analysis of 'CBL Applications Spreadsheet (2014-10-03)' which contained the key financial information about CBL's business which underpins CBL's financial

²⁶ ECS 13/2010 dated 25 April 2010

justification for the price increase, and the benchmarking study which accompanied the application documents submitted to URCA. Much of URCA's review of CBL's financial data cannot be disclosed due to reasons of commercial confidentiality. URCA therefore in this consultation presents only a summary of its review.

4.2.1 CBL's Application Spreadsheet

URCA has checked several elements of the Excel spreadsheet submitted by CBL:

- URCA has checked historical trends covering subscriber numbers and demand, revenues and costs for consistency with the financial data provided in CBL's previous annual separated (regulatory) accounts.
- URCA has checked the spreadsheet for calculation/mathematical errors.
- URCA has checked the consistency of the methodology used to derive forecasts for the two products (Prime Local and SuperBasic).
- Where possible, URCA has assessed the assumptions made by CBL for its forecasts to evaluate their reasonableness and impact on results.
- And finally, URCA has considered CBL's conclusion that it still would have a 'revenue shortfall' after the price changes.

As part of its review, URCA clarified with CBL its understanding of some aspects of the financial analysis included in CBL's application. Following these clarifications, URCA considers that the analysis presented by CBL meets the requirements of the Retail Pricing Rules and provides some indicative support for CBL's proposals. That is, URCA's review of CBL's financial analysis has not highlighted any concerns which would, on their own, lead to URCA rejecting the applications. For the avoidance of doubt, however, this does not mean that URCA has validated all aspects of CBL's assertions regarding the profitability of the services in question, or that it is bound to accept future submissions on other regulatory matters, prepared by CBL on the same basis.

In particular, from its review, URCA has:

- found that the historical data provided in the spreadsheet is consistent with the financial data and accounts provided in the CBL annual separated accounts;
- not found any formulaic or mathematical errors within the spreadsheet;
- found that CBL applied a reasonable approach to forecasting demand, costs and revenues for the two services, assuming that a share of existing SuperBasic customers would migrate to the Prime Local Service, despite some minor differences in the approach used to forecast operating costs and mean capital employed for the two services; and
- found that CBL has not applied a single consistent approach to deriving its forecast cost trends – for example, in some cases adopting long term trends, whilst for other variables only using the most recent historic trend (i.e., change in the last year) as the basis for its forecast.

Despite this last point, however, and taking into account CBL's response to URCA's clarification on this point, URCA does not consider that CBL's assumption set systematically either under or overstates the

costs of providing the relevant services. Without prejudice to any future regulatory decisions, therefore, URCA believes that CBL's financial analysis provides a reasonable basis for assessing the price applications.

Finally, it is important to note that, consistent with the Pricing Regulation Rules and the Accounting Separation and Cost Accounting Guidelines issued by URCA, the calculations set out in the spreadsheet provided by CBL are based on fully allocated costs. In its review, URCA finds that there is consistency in the revenue calculations. The impact of the price change is calculated using a bottom-up approach accounting for the unit price change for the migrating customers for SuperBasic and the price per customer for 'new' Prime Local subscribers.

However, in economic costing terms, the price of a product or service would not necessarily be expected to cover average costs, but rather cover marginal costs, with services making different contributions to common costs. Therefore, CBL's classification of the gap between operating income and costs (including RoCE) as a 'revenue shortfall' may be slightly misleading and URCA advises that any acceptance of the pricing applications by URCA should not be taken as evidence of URCA accepting there may be a need for other policy measures to be used to offset the 'shortfall'.

4.2.2 Benchmarking Analysis in CBL's Application

At Annex 1 of the SuperBasic Application (See Annex A below), CBL outlined its benchmarking methodology and results for SuperBasic services. The price benchmarking study (based on the prices in markets²⁷ suggested by CBL as having similar characteristics to The Bahamas) provided by CBL appears to be based on a reasonable methodology. However, this does not mean CBL's benchmarking methodology is without limitations. The benchmarking study showed that the average current price for cable TV packages comparable to SuperBasic from benchmarked jurisdictions was \$37.75 per month. As such, the benchmarking study prima facie appears to support CBL's application to increase the monthly price for residential SuperBasic cable service from \$30 to \$38. URCA notes, however, that CBL's benchmarking of the prices for comparable cable packages in markets purporting to have similar characteristics to The Bahamas does not provide any indication as to the degree to which charges for cable TV in those other jurisdictions are cost oriented.

4.3 Affordability of the Prime Local Universal Service

In Table 5 of the Prime Local Application document, CBL outlined its approach for assessing the affordability of the Prime Local universal service in The Bahamas. CBL referenced the Comms Act and the Retail Pricing Rules to make the point that, to date, URCA has not issued guidelines for measuring

²⁷Anguilla, Antigua and Barbuda, Aruba, Barbados, Bermuda, Bonaire, VI (British), Cayman Islands, Curacao, Dominica, Dominican Republic, Grenada, Guadeloupe and Martinique, Jamaica, Montserrat, Puerto Rico, St. Kitts and Nevis, St. Lucia, St. Maarten, St. Martin, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos, and Virgin Islands (US)

affordability of universal services (URCA's response is at Section 4.6.1). CBL bolstered its methodology with the following further arguments:

- firstly, on the availability of alternative pay TV services to SuperBasic (IPTV service by BTC and satellite TV services)²⁸; and
- secondly the subscription level for cable TV in The Bahamas is high with more than 90% of Bahamian population receiving pay TV from CBL (indicating in CBL's view, that the current residential SuperBasic is affordable).

URCA first addresses CBL's 'further arguments' followed by a review of CBL's affordability assessment. URCA's review is intended to confirm, or otherwise, CBL's assertion that the pricing for Prime Local is affordable.

Availability of alternative pay TV services to SuperBasic

BTC is not presently providing IPTV services, and URCA has concluded in its recent determination (ECS 14/2014) that satellite TV services in The Bahamas fall outside the identified services market for pay TV. This is simply because satellite TV services do not represent an effective substitute to CBL's cable TV services.

Pay TV Subscription levels in The Bahamas

A priori, a high level of take-up could be an indication that the service in question is affordable. However, URCA contends that a service may experience a high level of take-up without being affordable, simply because it is an essential service for the household (making consumers less sensitive to the underlying cost of using the service).

Further, the statutory obligation requiring CBL to provide an affordable basic TV service to all populated areas and specified institutions in The Bahamas remains regardless of current pay TV subscription levels. Indeed, one of the main purpose of universal service is to ensure the delivery of affordable, equitable, good quality, and efficient electronic communications services to everyone upon request.

As such, URCA does not believe that pay TV subscription levels in The Bahamas alone is enough to demonstrate that the service is affordable.

Comparing the cost of universal service to median income

URCA agrees with the approach taken by CBL in terms of comparing the cost of the universal service to median income²⁹ for different household income deciles. The approach is not outside the international mainstream and is the approach also taken in other regulated sectors, such as postal services, water, gas and electricity, where regulators have assessed the affordability of these services. The approach can focus on low-income groups, the average consumer, or both. However, focus is commonly on the

²⁸ Example BTC's IPTV services and satellite TV services.

²⁹ Table 5 of "Application to Introduce A New Basic Pay Television Service: "Prime Local" at Annex A.

population segment which is more likely to be affected by the cost of the service, that is, low-income households for which the cost of universal service may be a barrier for the acquisition of the universal service. Indeed, any affordability concerns are most likely to be experienced by the population with lower income levels. Moreover, a universal service that is affordable for the lowest income household would also, prima facie, be affordable for all.

Household Decile	Annual Median	Annual Median	Share of Monthly Median Income (%)	
	Household Income	Household Income	Upfront	Ongoing Monthly
Decile	2011	2015*	Payment**	Recurring Charges***
1	2,856	3,116	27.73	4.62
2	8,760	9,557	9.04	1.51
3	14,000	15,273	5.66	0.94
4	20,080	21,906	3.94	0.66
5	26,400	28,801	3.00	0.50
6	33,400	36,438	2.37	0.40
7	41,600	45,383	1.90	0.32
8	52,200	56,947	1.52	0.25
9	70,000	76,366	1.13	0.19
10	100,476	109,614	0.79	0.13
*Based on 2.2% annual increase in median household income over the period 2012 to 2015				
**Includes monthly subscription fee (\$10), monthly rental for STB (\$2), one-off charges for installation (\$40) and security deposit (\$20).				
*** Monthly subscription fee and monthly rental for STB only				

Based on CBL's data, at \$10 per month, the annualized price (\$120) of the universal service relative to median household income ranges between 3.9% for the lowest income household (decile 1) and 0.1% for the highest income household (decile 10). This led CBL to conclude that Prime Local is affordable. URCA's own analysis presented at Table 3 above demonstrates that the monthly recurring charges (monthly subscription and STB rental) associated with the universal service could be judged affordable for all (i.e., *'new'* subscribers and *'existing'* SuperBasic subscribers migrating to the Prime Local service). This is because both groups of customers would pay the same level of charging on a recurring ongoing basis. However, URCA's analysis shows a slightly higher spend on the service than CBL's analysis. This is because CBL's analysis did not take account of STB rental. URCA considers that this element should, however, be included, to get a truer sense of the monthly recurring costs a customer would face. Based on URCA's data, recurring charges represent less than 5% of the median income for the lowest decile and 2% of median income for the second (1.51%) and third lowest (0.94%) income deciles.

However, URCA notes that *'New'* subscribers would also face additional charges (installation and security deposit) beyond the monthly recurring costs (monthly subscription, rental for STB) and these must be taken account of in any affordability analysis. URCA notes that CBL in its affordability analysis has not given any consideration to these one-off charges. From the perspective of a *'new'* customer,

these one-off charges are unavoidable and must be paid in the first month before the customer can be connected to the network. CBL has projected that there could be 700 potential subscribers that fall into the category of 'new' customers.

Taking CBL's analysis into account, URCA presents in Table 3 above a further analysis on the affordability of Prime Local from the standpoint of a 'new' subscriber. In this case, the upfront one-off payments would represent 83%³⁰ of the total costs a 'new' customer subscribing to cable TV for the first time using the Prime Local service must pay before he/she is connected to the network. Accordingly, in the first month the costs (inclusive of one-off charges for installation and security deposit) of the USO package would represent around 27.73% of median income for the lowest household decile, 9.04% and 5.66% respectively for the second and third lowest income deciles versus less than 1% for the highest income decile.

In URCA's estimation, the upfront charges associated with the universal service may be a barrier for the acquisition of the service by some low-income households who are presently without cable TV. URCA is of the view that for the Prime Local service to be judged affordable for all (i.e., 'existing' and 'new' customers in populated areas), CBL as the USP (Universal Service Provider) must offer more flexible payment options that would make the initial upfront payment (installation and security deposit) more affordable for low-income households. URCA advises that an appropriate set of proposals from CBL to address URCA's concerns would be critical to URCA's review. One option CBL may wish to consider is to allow customers to pay the installation fee over a maximum period of four months (i.e., \$10 per month). URCA also seeks inputs from prospective consumers on reasonable payment options CBL should offer to 'new' customers of its Prime Local service.

4.4 CBL's Compliance with Universal Service Rollout Obligation

The overarching goal of Universal services policy is to ensure the physical provisioning of universal services throughout The Bahamas. This is reflected in the current requirement for universal services (excluding public pay apparatus) to be provided "to all populated areas" in The Bahamas.

As previously stated, under CBL's proposal, the Prime Local package would be introduced in the most populated islands of New Providence, Abaco, Grand Bahama, and the parts of Eleuthera that have a two-way digital infrastructure. Approval of the application would therefore mean that CBL is not totally compliant with section 119(1)(e) and paragraphs (1)(b)(i) and (iii) and paragraph (2)(c) of Schedule 5 of the Comms Act.³¹ In the "unserved" geographic areas CBL operates an analogue network and as URCA noted at Section 1.1 above, CBL's network is currently technically incapable of providing multiple TV packages (e.g., Prime Local and SuperBasic, or SuperBasic and premium tier channels) in these

³⁰ $\$60/\$72*100$ - \$60 is the total of the one-off installation fee (\$40) and security deposit (\$20). \$72 is the total of the one-off installation fee (\$40), the security deposit (\$20), the monthly charge (\$10) and the monthly rental fee for STB (\$2).

communities. URCA remains steadfast in its view that total compliance by CBL with the provisions of the Comms Act must ultimately be achieved. However, considering that a sizeable segment of the population (91%) would have access to the universal service, URCA considers it reasonable and proportionate to proceed, as proposed by CBL.

Under the circumstances and without prejudice to URCA's concerns in Section 4.3 above (on affordability) and Section 4.6 below (Prime Local channel lineup), URCA is minded to accept CBL's partial compliance with the obligation. However, going forward, URCA's expectation is that the universal service would be made accessible to all remaining populated areas consistent with CBL's obligation. URCA will, subject to engagement with CBL and a public consultation process, establish or specify the timeframes by which the "unserved" population in other Bahamian islands can expect to have access to Basic Television universal service in the future, having regard to the time period required for CBL to carry out the necessary technology-neutral national rollout in all populated areas, whether by upgrades to its network or otherwise.

4.5 CBL's Applications in the Context of the Objectives of the Comms Act

URCA considers that the applications submitted by CBL on 7 October 2014 are compatible with the overarching objectives of the Sector Policy as specified at section 4 of the Comms Act, in that:

- the introduction of the Prime Local universal service is a statutory requirement that mandates CBL to provide *"affordable basic television services to all populated areas and specified institutions"*;
- the introduction of Prime Local would ensure that persons in The Bahamas with limited purchasing power would still have access to a minimum level of cable TV service upon request;
- approval of the rate increase would make the price of SuperBasic more cost reflective;
- the rate increase would ensure that the service remains economically attractive on a going forward basis; and
- the proposals encourage and promote further investment in electronic communications networks and services.

4.6 Other Issues Arising in CBL's Applications

The other issues arising from URCA's review of CBL's application documents are set out below.

4.6.1 Status of URCA's Affordability Guidelines

Affordability of universal service is one of the key objectives of regulatory and communications policies around the world. The affordability of universal services is an important requirement to ensure that

³¹The remaining 10% or less of the population that would not have access to the Prime Local universal service includes Bimini, Berry Islands, San Salvador, Great Inagua, Andros, Great Exuma, and Long Island.

society as a whole can benefit from using the services. This is reflected in the current universal service obligations in The Bahamas, which refer to the provisioning of affordable universal services (section 119 and Schedule 5 of the Comms Act) and paragraph 57 of Part K of the Retail Pricing Rules.

URCA appreciates the need for guidelines for measuring the affordability of USO-related services. URCA advises that whilst it has prepared such guidelines for the current universal services (described in section 119 and Schedule 5 of the Comms Act), the document is yet to go out to public consultation. It was suggested to URCA by CBL, and agreed by URCA that in light of CBL's impending price applications, it would be appropriate for URCA to further delay consultation on the universal service affordability guidelines in the intermediate term.

4.6.2 Relevant Economic Tests

CBL has declared that the applications are in total compliance with the statutory framework for electronic communications in The Bahamas, especially the concerns in paragraph 19.10 of the Pricing Rules. URCA is in general agreement with this assessment:

Price Squeezing

CBL is not in a position to exert a price squeeze on others. This is because CBL does not provide critical wholesale inputs to alternative operators within the identified services market for cable TV services. URCA notes that it has not imposed any obligation requiring CBL to provide wholesale products and services to alternative operators in the identified pay TV market. Nor is URCA aware of any commercial or unregulated arrangements between CBL and other licensees for the provisioning of inputs to potential downstream competitors in that services market (or licensees seeking such an arrangement with CBL). Further, as URCA has concluded in ECS 14/2014, CBL faces no actual competition in this relevant market. For these reasons, URCA agrees and endorses CBL's conclusion that potential margin squeeze is not a relevant consideration in this proceeding.

Predatory Pricing

By definition, predatory pricing occurs where a dominant licensee incurs short-term losses or foregoes profits in the short-term so as to foreclose (or be likely to foreclose) a competitor or potential competition, with a view to strengthening or maintaining its market power. As the SuperBasic application is for a price increase, concerns about price predation would not typically arise. Indeed, even if the current SuperBasic price could be viewed as predatory, the proposed price increase would make it less predatory.

As mentioned above, the Prime Local service is priced on the principle of "*affordability*" rather than the principle of '*cost orientation*' of prices. For this reason, and supported by CBL's affordability analysis, CBL proposed to set the Prime Local price below the projected average per unit FAC (i.e., Fully Allocated Cost). Under the Retail Pricing Rules, there is no automatic rejection of a price that is below average costs. Based on paragraph 21 of the Pricing Rules, "*... where the proposed price is below the cost ... incurs in providing the service ... the operator must demonstrate that the proposed price is **objectively justified**, ...*". Having regard to the absence of actual competition in the identified pay TV market and the

'affordability' principle established in the Comms Act, URCA believes that the Prime Local price at \$10/month could be judged as objectively justified.

Whilst URCA's own review of CBL's information suggests to URCA that Prime Local is underpriced relative to costs, this in URCA's estimation does not amount to price predation. In order for a price to be predatory, the appropriate cost standard is the incremental costs of an efficient operator rather than average cost. Finally, given current market structure it is not clear to URCA why CBL would choose to predate therefore, URCA is of the view that concern about price predation would be extremely limited.

Price Discrimination

As provided for in the Retail Pricing Rules, price discrimination would arise "*when a dominant licensee applies dissimilar prices to similar retail or wholesale customers for the same product.*"³² URCA considers that CBL's applications do not give rise to any such concern at the wholesale or retail level. Dissimilar pricing at the wholesale level is not a relevant consideration because CBL does not provide critical wholesale inputs to alternative operators, whilst at the retail level, CBL charges different prices to residential and commercial customers; users within each market segment face the same prices for the same product. It is also worth noting that while the Prime Local application does not yet cover offering the USO package throughout The Bahamas, it is proposed to be offered at a uniform price to residential customers in areas covered by CBL's digital network.

4.6.3 Restriction on Access to Premium Channels

CBL proposes to restrict access to its premium tier channels on the grounds that this is essential to avoid cannibalization of SuperBasic revenues. On this issue, URCA's principal concern is whether CBL's proposed restriction on the service is reasonable and welfare enhancing for customers.

URCA acknowledges and notes CBL's concern about potential cannibalization of SuperBasic revenues, but while URCA considers that this concern may be overstated, URCA considers that considering that the purpose of the package is to meet the needs of those who cannot afford CBL's more expensive packages, a limitation of this nature is not inconsistent with the objectives of the package. URCA's research of the cable market in other jurisdictions suggests that operators often allow customers of their low-end or basic entry-level products some degree of flexibility and discretion. This can be rewarding to both customers and operators and boost customer loyalty. As an example, in the United States of America, cable television operators such as TimeWarner Cable, Comcast, Charter Communications, Optimum and others provide a 'basic' or 'starter' package of perhaps 20 channels and allow subscribers to migrate or upgrade without restriction to other, higher-priced packages with increasing numbers of channels that include premium tier services. On balance, URCA's preliminary position is that the proposed restriction is not objectionable.

³² Paragraph 71 of Annex 2 of the Retail Pricing Rules (ECS 06/2014) .

URCA invites consumers and other stakeholders to provide feedback, together with evidential information to substantiate their position, on CBL's proposed restriction against Prime Local customers adding premium tier channels without first upgrading or migrating to the SuperBasic/RETV Prime service.

4.6.4 Proposed Channel Lineup for USO Package/Prime Local

As regards this issue, URCA's primary focus here is whether the proposed channel lineup *"is sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment"*, in accordance with URCA's determination at Section 4.9 of ECS 01/2013.³³ This issue is critical to URCA's review considering CBL's proposed restriction on the service in terms of denying Prime Local customers access to its premium tier channels.

As previously stated, CBL currently provides a multichannel broadcast service³⁴ free of charge to residents in specified Family Islands, which includes ZNS Channel 13, Parliamentary Channel, ABC, NBC, Fox News and CBS. Comparatively, for \$10 per month Prime Local customers would receive ZNS Channel 13, Parliamentary Channel, PBS-WPBT2, Bahamas Christian Network (BCN), CALA Weather and Jones Communications Network. URCA notes that CBL has in its application made representations regarding the content on the channel lineup which support a finding that the channel meets the requirements of URCA's USO Framework document, that is, CBL contends that the package is *"sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment."* URCA considers that CBL has made reasonable arguments in this regard, however URCA considers public feedback critical to a final decision on this issue.

Taking the above, URCA seeks inputs from the Bahamian public (together with evidential information) on the appropriateness of the additional channels (to ZNS-Channel 13 and Parliamentary Channel) proposed by CBL to comprise the Prime Local service. In particular, whether the additional channels *"are sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment"* as determined by URCA.

³³URCA's Statement of Results and Final Decision – *"Framework for the Clarification and Implementation of Existing Universal Service Obligations Under Section 119(1) and Schedule 5 of the Communications Act, 2009."*

³⁴Inclusive ZNS Channel 13, Parliamentary Channel, ABC, NBC, Fox News, and CBS.

5 Conclusion and Next Steps

At Section 3 above, URCA set out the legal and regulatory basis for its review of CBL's Applications:

- (1) To Introduce a New Basic Cable Television Service (to be marketed as '*Prime Local*' or '*RETVV Prime Local*'); and
- (2) For a Permanent Price Change to the '*SuperBasic*' Service (currently marketed as '*RETVV Prime*' and '*RETVV Business Prime*').

In the context of this price-setting exercise, URCA determines it appropriate and efficient to issue a single consultation paper for the purpose of complying with sections 11 and 13(1) of the Comms Act.

At Section 2 of this paper above, URCA summarised its preliminary views and intent on substantive issues arising in CBL's application documents.

5.1 Next Steps

With this consultation paper, URCA invites and requests consumers and other interested stakeholders to comment on URCA's preliminary conclusions regarding CBL's applications. Specifically, respondents are encouraged to set forth in their responses those issues they consider to be contrary to relevant regulatory objectives, principles and/or obligations applicable to URCA's review. In any such responses, a respondent should set out clearly its reasoning for such objections, together with evidential information to substantiate its position.

URCA will issue a Statement of Results after careful consideration of all the written submissions received on or before 30 January, 2015.