

16th February 2012

Ms. Kathleen Smith

Director of Policy and Regulation

Utilities Regulation and Competition Authority

P.O. Box N-4860

Nassau

Bahamas.

Dear Ms. Smith,

URCA's Draft Policy for Opening New Spectrum Bands.

We refer to the above, here is our response.

Firstly Peace Holdings Ltd. (PHL) has applied for specific portions of the 700Mhz spectrum in an application and letter dated 4/10/2010 and acknowledged by URCA's response dated 15/03/2011. We are troubled to find that PHL's application and expressed interest in having a specific allocation of 700 MHz frequency has not been acknowledged alongside others in the Draft Policy. Please can you correct the document and accurately state our interest.

Consultation Question #1:

Do you agree with URCA's proposals for interim pricing of newly opened standard spectrum bands? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

Peace Holdings does not agree with URCA's proposals for interim pricing of newly opened standard spectrum bands.

Section 93 of the Communications Act states that fees may (not must) be charged to reflect the need to ensure the optimal use of spectrum. For each spectrum range listed URCA needs to firstly prove whether fees are necessary at all to ensure optimal use and if so that the fees it proposes are appropriate to satisfy that end. Detailed reasoning and supporting evidence ought to be provided; otherwise the fee proposals seem arbitrary and can hardly be agreed with. URCA has also proposed to add "use or lose" conditions, spectrum auditing, roll out requirements and a rigorous selection process for licensees

seeking certain spectrums. With so much control and scrutiny already ensuring optimal use, fees seem unnecessary.

More than once URCA mentions the need to recover the economic value of spectrum for the government. However fees based on the economic value of spectrum are not legal. Perhaps that's why in one instance URCA tries to attach the recovery of a spectrum's economic value with encouraging licensees to take only enough spectrum for their needs, thereby linking economic based fees to optimal use. However there is a vast difference between the economic value of spectrum and the optimal use of spectrum and URCA's link is tenuous at best. URCA clearly has an agenda to introduce a policy of raising fees based on how much money can be made commercially on the corresponding spectrum. The Bahamian people should be aware that government fees, especially those based on the economic value of spectrum, are effectively a stealth tax. Fees are always passed on to the consumer and take money out of the greater economy. Fees based on economic value are often favored by larger companies that are significant market players. They have the existing infrastructure and customer base to seemingly qualify for large spectrum blocks and the capital to buy or rent them leaving them unavailable for competition. Consumers are then hit twice – high prices due to a lack of competition plus the high government fees discreetly incorporated into their bills.

In any circumstance where fees might be needed to ensure optimal use of spectrum then the effectiveness and fairness of those fees would be relative to the size of the organization paying them, especially in a newly and only partially liberalized market like the Bahamas. BTC anticipates that it will exceed \$80 million in operating income this year. Cable and Wireless Communications which owns 51% of BTC expect this to rise to \$100 million annually in the medium term. In addition, Cable and Wireless Communications had annual revenues of \$2.4 billion in the year ending 31st March 2011. In its last annual report Cable Bahamas had operating income of \$27.2 million. URCA knows that much of the competition emerging in the Bahamian communications sector will not have the same incomes, revenues or assets; at least in the near term. The fees that URCA proposes are easy amounts for significant market players to prepay and pass on to an existing customer base but not for new operators who don't have well established communications businesses built on years of monopoly rights. They've got to pay the fees in addition to the cost of building their networks, recruiting and training a professional staff, establishing headquarters, outlets, distribution, facilities, building a customer base, winning market share from incumbent providers, etc. Larger companies can easily afford to pay fees and park the spectrum just to keep it from the emerging competition. This is probably one reason why URCA has several proposals to ensure optimal use, and there are several possibilities which would be far more effective than fees. Low or no fees creates more competition and is better for consumers. The focus right now should be fairness not fees.

Consultation Question #2:

Do you agree with URCA's approach to the geographical categories for licensing of newly opened spectrum bands? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

Peace Holdings does not agree with much of URCA's approach to the geographical categories for licensing of newly opened spectrum bands.

Technologies are now available for small operators without significant assets or capital to build and grow viable commercial networks in remote areas even on an island by island basis. Historically, Family Islands have experienced lower service levels because of the commercial expense in servicing large geographical areas with small populations. Technology will continue to change this dynamic. If the regulator had imposed nationwide service requirements in the past then Family Island networks would have been subsidized by higher consumer prices in the more populated islands and it's likely that service levels would still have suffered eventually. Vested commercial interests and competition fine tune price and service excellence in ways that regulations cannot touch. Therefore operators should have a choice to serve or not to serve nationally. Some operators may gladly build a nationwide network if it's commercially viable or if it's desirable to fulfill corporate commitments and mission statements. However other operators may find it favorable to focus on managing a complex and crowded network on more populated islands without trying to maintain a much smaller and widespread network at the same time. Conversely companies and entrepreneurs may want to focus exclusively on delivering service to a small island or group of small islands without trying to compete in the more populated areas. This is certainly the case even in major markets like the US where you will see niche players better serving remote or unique areas that the large networks choose to overlook to better serve their main target markets. Smaller networks thrive on delivering service excellence and can partner with other operators large and small to provide seamless service. In a free market, big business does not have exclusivity on the communications industry and regulators don't design the market. URCA's current proposal will force certain Bahamian enterprises, perhaps prematurely, to become national service providers rather than letting a healthy free market mix of national, regional and local providers develop. If URCA tries to manage the market rather than cautiously regulate it so that a free market can thrive then the result will be less competition. This policy will lead to a market where there are mainly a few large companies operating. Principally its proposal favors those significant market players that can afford the larger capital and operating expenditures at the outset of their network expansion and who already have significantly sizable, widespread networks and customer bases established on years of monopoly privileges. New entrants will require larger capital expenditures, have to pay increased government fees upfront, and may be forced to operate outside their niche specialties. There is a danger that service levels and prices will continue to plateau at unfavorable levels. Bahamians who have experienced better prices, service levels and options overseas understand that the Bahamian market has vast room for improvement. Market manipulation can never beat free markets in achieving that no matter how tempting it is to try and force results in the short term. URCA should let the free market work.

Consultation Question #3:

Do you agree with URCA's proposals for licensing the 700 MHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

PHL does not agree with URCA's proposals for licensing the 700 MHz band.

In establishing the basis for its proposals URCA identifies a link between LTE, mobile services and 700 MHz but these are fundamentally three separate things. LTE is a wireless high speed data technology that can be implemented on any number of frequencies and used for mobile, fixed and/or nomadic wireless broadband services. One of the reasons LTE is becoming the predominant 4th generation "mobile" technology is due to the high demand for mobility and because in liberalized markets like the US, mobility is not restricted when offering wireless broadband services. However it is restricted in the Bahamas. Mobile operators abound in a liberalized market where there is no commercial reason for operators not to offer mobility when they legally can. If mobility was legally restricted to one operator in the US and other countries there would be a predominant use of high bandwidth technology like LTE for nomadic and fixed wireless services. There are very different dynamics in international markets and if it wants to be non-discriminatory, URCA should be cautious in establishing rules for a non-liberalized Bahamian market based on free market trends in more liberalized markets. How technologies are applied are primarily commercial choices not regulatory ones. It's perfectly viable and highly beneficial for fixed and nomadic broadband wireless services to be provided using LTE technology and there are several such operations internationally.

URCA proposals will increase BTC's monopoly advantage. In the US, due to saturation of frequencies used for mobile voice and data services, operators wanted additional frequency to offer high speed wireless broadband service on their networks. With the closure of terrestrial analog T.V., 700 MHz became available for wireless broadband. However, not all 700MHz has the same commercial value. URCA acknowledges that 700 MHz can be used for mobile, nomadic and fixed services and proposes to divide the 700 MHz between these commercial applications and public health and safety.

It appears that URCA's math in 3.1.2 and 4.3.2 regarding spectrum allocation might not add up. URCA says their proposal allows for 6 commercial operators with a maximum of two blocks each in the band. There is a total of 108 MHz;

12 MHz for public safety (PS)

24 MHz for BTC; they can select from blocks B, B', E, E', F, F'. (1 operator)

48 MHz for two future mobile operators, they can also select from blocks B, B', E, E', F, F'. (2 operators)

12 MHz of paired spectrum in block A.

6 MHz in block C.

6 MHz in block D.

Since there are only 3 blocks remaining, it appears there will be only one block per non mobile operator not two as proposed.

We strongly disagree with URCA's proposal to give BTC up to four times the bandwidth of other operators. We also strongly disagree that a huge 48MHz block of spectrum be taken off the market for future providers when there is demand from existing providers right now. Assuming BTC would still get 24 MHz there should still be at least 72 MHz available now for perhaps up to 6 operators.

URCA's current proposal has significantly limited the options for others while it proposes to give BTC a very generous portion of its choosing from blocks B, B', E, E', F, F' and then withhold the remaining portions of those blocks for two future mobile carriers. These potential mobile carriers are not legally permissible until at least 2014 and in reality there will not likely be any services provided until at least 2015. URCA says that the blocks that will be given to BTC and/or held in reserve have more economic value. URCA implies that this is because they have been allocated for mobile services in the Bahamas and mobile services can make more money. However it's not URCA's allocation for mobile that makes them more valuable. Their real worth is that they are frequencies allocated in the USA for special types of devices and applications and that is why they are more valuable commercially. In particular the E and E' blocks in the Bahamas correspond with the Upper C Block in the US.

In the US, networks that own the Upper C Block frequency must allow customers to connect to the corresponding wireless broadband service using any device and any software application that's not harmful to the network. Any manufacturer can make devices. Any developer can create applications. In other frequency blocks large carriers will have their devices and applications locked preventing the transfer of devices across networks. Devices drive demand for network services and networks promote and guard their "must have" devices jealously. Due to the open nature of the Upper C frequency and the size of the US market, an explosion of unique devices and applications will be made for this block and demand for these devices and the networks that support them will be extremely high. Competition in the development of these devices will lead to advanced hardware and software applications that maximize bandwidth efficiency, a tremendous added benefit for the operators that have rights to the frequency. Operators and consumers in the Bahamas will be able to import these devices freely and use them on whatever networks have the corresponding E and E' frequencies. There can be no doubt that a regulator like URCA knows that it is proposing to allow this gem of a frequency with its incumbent business opportunity to go exclusively to BTC. This would give BTC a monopoly on the revenue that can be generated in open source device sales and the network subscribers who want to use those devices. To say BTC already has a significant market position would be an understatement. It is the only provider that can offer mobile services, currently worth over \$185 million annually (2009 annual report). It already offers mobile 4G service via its existing network and already has desirable 4G devices for sale. It can build an LTE network using the same backbone and frequencies, BTC does not need 700Mhz. Cable and Wireless Communications aka LIME has over 2.5 million mobile customers and growing so BTC has the gravitas to continue to have devices specially developed or adapted for whatever frequencies they might adopt. Emerging wireless providers will not acquire these as easily, or as cheaply and maybe not even at all. If wireless broadband providers like Peace Holdings have allocations in the E and E' then they can develop a network that will provide service to customers who want to use these highly

desirable open source devices. This would give them a reasonable chance to compete with BTC. URCA says that there are many other frequencies that are currently underutilized that could be used for broadband wireless access and public mobile networks. Since BTC is recognized under Bahamian law as a Significant Market Player then perhaps URCA should require BTC to use these if they need more frequency not the emerging providers who need the advantages of 700 MHz to get a foothold in the market. The entire 700MHz range should be made available for the newer and smaller players and in particular the E and E' blocks. This would be a real step to leveling the playing field and encouraging successful competition. Right now URCA proposes the opposite and offers a significant advantage to BTC. Even though BTC doesn't have any legal exclusivity in offering wireless broadband, URCA will be giving it at least a two year monopoly on the most anticipated and potentially profitable frequency for data devices from which it will establish a significant market share without any competition. URCA must know this, so why is it discriminating in favor of BTC? The law clearly doesn't require it. URCA's proposal flies in the face of creating a level playing field.

As an additional note Cable Bahamas, the other Significant Market Player recognized under Bahamian law, already has (thru SRG) the entire 2.5 GHz frequency which is used for 4G Wimax broadband networks in the USA. This is a substantial frequency block. It has no real need of 700 MHz either.

The information to be submitted by applicants and the proposed selection process strongly implies that URCA has an expectation that companies applying for 700MHz should be sizable. Whilst Peace Holdings can confidently apply based on such requirements it is concerned that the overall direction of URCA's 700 MHz proposal is to give BTC a major share of the prime spectrum and keep others out, albeit they offer the token gesture of a fraction of the bandwidth in a much less favorable portion of the band. Effectively URCA has blocked competition in the 700 MHz even though new players are ready to serve the Bahamian consumer. Its selection process seems to be another way to ensure that BTC win the commercial advantage and/or that URCA, not the market, has the right to choose winners and losers. As proposed, the selection process will not be transparent and operators will have no way to determine whether they have been fairly accepted or rejected and if accepted whether they have been fairly placed to pick their preferred spectrum block by URCA.

Our proposals;

There is certainly plenty of spectrum that can be made available right now especially if Significant Market Players have to go to the back of the line for a change. 96 MHz should be made available now allowing for 8 initial applicants to have 12 MHz each (more than have currently expressed an interest).

If there are more than 8 interested parties then applicants should meet a reasonable, not excessive, eligibility criterion which is put out to consultation prior to it coming into effect.

URCA should let applicants apply and select their preferred blocks. Where there are no conflicts blocks should be allocated. Where there are conflicts blocks should be shared or negotiated.

URCA should create a level playing field and let free market principles apply. As operators win market share and need more spectrum to grow, URCA can assess whether there is unallocated 700 MHz available to be used or it can look to operators with unused spectrum and assess whether any should be reallocated. If all operators are doing reasonably well and using their respective blocks then operators can grow by merging, buying the competition, partnership arrangements or being creative with other spectrums. All are healthy economic activities.

Applicants should be free to decide whether or not they want a nationwide or island by island allocation.

Spectrum fees should be avoided to reduce consumer expense and to accelerate market efficiencies that spur competition with all its inherent benefits.

Consultation Question #4:

Do you agree with URCA's proposals for packaging, pricing and licensing the 11 GHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

There are certain elements of concern in this proposal that we have already addressed in answering questions relating to other proposals.

Consultation Question #5:

Do you agree with URCA's proposals for packaging, pricing and licensing the 12 GHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

There are certain elements of concern in this proposal that we have already addressed when answering questions about other proposals.

Consultation Question #6:

Do you agree with URCA's proposals for packaging, pricing and licensing the 42 GHz band? Please provide detailed reasons for your response, including if appropriate, alternative proposals.

There are certain elements of concern in this proposal that we have already addressed when answering questions about other proposals.