



February 15, 2010

Mr. Michael Symonette,  
Chief Executive Officer,  
Utilities Regulation & Competition Authority,  
Fourth Terrace, Collins Avenue,  
P.O. Box N-4860,  
Nassau.

Dear Mr. Symonette,

**Re: Consultation Document ECS25/2009 – Utilities Regulation & Competition Authority Three Year Strategy & Annual Plan for 2009-2010 (the “Plan”)**

Please find below the comments of Systems Resource Group Limited (“SRG”), d.b.a. IndiGO Networks® (“IndiGO”), with respect to the above captioned.

***URCA’s Priorities for 2010***

SRG makes the following comments on URCA’s stated priorities for 2010.

**Anti-Competitive Behaviour**

An oft levelled accusation at the prior regulator, the Public Utilities Commission (“PUC”), was the length of time taken for it to investigate and take action on disputes arising from anti-competitive behaviour, particularly as they related to interconnection. SRG notes URCA’s stated intention to take action against alleged anti-competitive behaviour, and that such efforts are “ongoing”, however SRG would respectfully comment that interconnection matters already brought to the attention of URCA following the passing into law of the new Communications Act on September 1, 2009 have yet to see any resolution.

SRG shares URCA’s view that implementation of regulatory safeguards is critical to a level playing field, but would further comment that given the market distortion that anti-competitive behaviour by an SMP operator creates, it is not something that should be allowed to take the course of time. SRG respectfully suggests that such matters should be given priority, and that in cases where it deems it justified, URCA should be prepared to make preliminary rulings, with orders to cease and desist, whilst further investigative action proceeds.

It cannot be justifiable for an SMP operator to be permitted to carry on distorting a market with impunity, to its competitive advantage, months after URCA has been advised that such a situation exists. Business acquired in the period during which the anti-competitive behaviour was allowed to persist cannot be undone, and a customer lost to anti-competitive activity cannot readily be recovered, whatever final action is taken by URCA in the fullness of time.

### **Spectrum Activities**

SRG is surprised that somewhat inconsequential activities relating to radio spectrum have been allowed to take precedence.

In particular, infrastructure sharing is essential to the ability of new radio operators to competitively plan and build their networks, especially in ways that are environmentally responsible. SRG respectfully suggests that it is incongruous for infrastructure sharing to be relegated to a consultation process beginning in Q3 2010, and therefore not complete much before the end of the year, whilst activities such as new spectrum bands and spectrum refarming are to be subject to consultation earlier, in Q2. Since effective use of spectrum is dependent upon infrastructure sharing, SRG believes that the latter should take precedence.

With respect to spectrum refarming, SRG is of the view that spectrum trading should form part of any such discussion.

### ***URCA's Budget***

SRG is pleased to note the comment in section 6 of the Plan, that URCA's intention is to "provide value for money". However, SRG has found it difficult to reconcile that stated intention with URCA's budgeted operating expenses for 2010 of \$4.8 million.

In its response to the Consultation Paper on the Issues and Options for Reform of the Regulatory Framework for the Communications Sector, SRG highlighted the fact that the regulator is not under the restraining influences of market forces to ensure that it operates efficiently. SRG stated as follows:

"Operators in the sector are each a private company that is responsible to its shareholders, and as such are motivated by market forces to be efficient and control their costs. There is no such motivation with respect to the regulator. Indeed, the tendency will be for the regulator to become bloated with excessive costs and overstaffing, all paid for by the perceived unlimited resource that is the revenue base of the operators.

The regulator should be accountable and required to live within its means, with imposed cost control that is based upon the size of the market and the cost of operating efficient regulators in similar jurisdictions."

SRG’s anecdotal view is that a budget of \$4.8 million per annum for a regulator to operate in limited sectors is high. That view has been reinforced by a comparison of the proposed URCA budget with the budgets of other communications sector regulators across the region. A representative table is below:

| <b>Country</b> | <b>Most Recent Report Available</b>          | <b>Est. Population</b> | <b>Regulated Sectors</b>  | <b>Annual Expenses of Regulator</b> |
|----------------|--|------------------------|---|-------------------------------------|
| Bahamas        | 2010 budget                                  | 330,000                | Telecommunications<br>Broadcasting                                      | \$4.8m                              |
| Barbados       | Annual Report to March 31, 2009 <sup>1</sup> | 285,000                | Telecommunications<br>Electricity<br>Natural Gas                        | \$3.8m                              |
| Cayman Islands | Annual Report to June 30, 2005 <sup>2</sup>  | 56,000                 | Telecommunications<br>Broadcasting<br>e-Business                        | \$1.3m                              |
| Jamaica        | Annual Report to March 31, 2008 <sup>3</sup> | 2,800,000              | Telecommunications<br>Electricity<br>Water & Sewerage<br>Transportation | \$3.1m                              |
| Turks & Caicos | Annual Report to March 31, 2009 <sup>4</sup> | 36,000                 | Telecommunications  | \$1.3m                              |

Factors that affect the cost of a regulator’s operations are the number of sectors that are subject to regulation, and the extent of competition, which itself has direct bearing on the number of operators.

By any measure, SRG takes the respectful view that URCA’s budget is disproportionate:

- The Bahamas is the least competitive of the listed jurisdictions, with only a small number of operators;
- URCA is responsible for regulation of only a limited number of sectors;
- URCA’s budget is 26% greater than the next highest jurisdiction of Barbados, which also regulates electricity and natural gas, and 269% greater than the lowest cost jurisdiction that regulates the same sectors.

<sup>1</sup> [http://www.ftc.gov.bb/library/2009\\_annual\\_report\\_ftc\\_barbados.pdf](http://www.ftc.gov.bb/library/2009_annual_report_ftc_barbados.pdf)

<sup>2</sup> <http://www.icta.ky/docs/Reports/Annual%20Report%202004-2005.pdf>

<sup>3</sup> <http://www.our.org.jm/images/stories/content/Publications/AnnualReports/OUR%20Annual%20Report%2007-08%20%28Final%20for%20printing%29%208.12.08.pdf>

<sup>4</sup> <http://www.telecommission.tc/content/root/files/20091006095509-AnnualReport2008-2009.pdf>

URCA may argue that its costs are escalated because it has a greater amount of ground work to put in place as a new regulator, but with respect, SRG considers this to be a weak position. URCA's predecessor, the PUC, has 7 years of history under its belt, and whilst The Bahamas may be a latecomer to widespread sector liberalisation, there is no reinvention of the wheel that is required. URCA will be liberally applying the practices of other jurisdictions, as has already been the habit in development of the enabling framework and legislation. The extraordinary sums budgeted for outside consulting in the sum of \$1,270,500 would reinforce that view.

URCA does not advise with respect to its headcount, but SRG notes that executive and staff costs total \$1,896,062 and rent & utilities \$302,400, numbers that would suggest a high level of staffing and rental square footage to house them.

SRG's respectful view is that by any measure URCA's budget is excessive, and would certainly not pass muster in a commercial business. Given that it is the commercial operations of a handful of licensees whose largesse must fund URCA, SRG considers that the burden placed on those operators is too high.

### **Impact of URCA Fees and Government Fees on Operators**

It is instructive to reflect on the practical impact of the total fee structure imposed on the electronic communications sector since establishment of the new sector regime.

In past years, under the telecommunications act 1999, SRG has paid fees and taxes as follows:

1. A government annual business licence fee based upon 1% of revenue;
2. A PUC annual telecommunications licence fee based upon 0.524% of revenue;
3. A PUC annual fixed fee for radiocommunications spectrum.

In 2010, SRG is expected to pay the following taxes and fees:

- A government annual business licence fee based upon 1% of revenue;
- An URCA annual communications licence fee based upon 1.104% of revenue to fund the above budget (more than double the prior telecommunications fee previously paid to the PUC);
- An new annual fee to fund the Utilities Appeals Tribunal (amount yet to be determined);
- An new annual fee to fund the Universal Service Fund (amount yet to be determined);
- A new annual fee for radio frequency spectrum set by URCA, but paid to government;
- A new government communications licence fee based upon 3% of revenue.

For the two market monopolists, BTC with its statutory mobile monopoly & CBL with its once statutory and now practical television monopoly, the above has no material financial implication since in years past the monopolists have in any event paid commensurate fees as a quid pro quo for their monopoly licences.

- BTC is on record as stating that since 1992 it has annually paid a \$4 million franchise fee to the Government, in addition to dividends that have totalled in excess of \$150 million since 2004.

- Under its 15-year monopoly licence dated July 30, 1993 CBL paid an annual fee equal to 5% of its revenue to the Government<sup>5</sup>.

Conversely, as a competitor to the incumbents in limited markets, with no advantage of monopoly services, SRG has not historically paid the same monopoly fee structure. Unfortunately, whilst the statutory or practical monopolies remain to the commercial benefit of the incumbents under the new electronic communications sector, the same cannot be said of the fee structure, whose scope has been widened to now incorporate a significant financial burden on SRG, with little change for the incumbents. Indeed, astonishingly, CBL now finds itself in the position of paying less by way of fees than was the case under its prior licence.

For SRG however, as a new entrant in restricted markets, the cumulative effect of the new fees that have so far been advised is to increase SRG's annual fees paid to the regulator and government by a total of 276%, with further as yet unquantified fees to follow. The actual dollar impact on SRG is many hundreds of thousands of dollars per annum in additional fees that are demanded in advance. It is a mystery how it is expected that any business can accommodate the astonishing escalation in fees and taxes demanded out of competitive business models that were established under different sector regulations, and where competing incumbent operators have monopoly markets that provide their cash flows.

SRG is of the respectful view that the total fee structure imposed is counter intuitive to both the declared objective of the Act in "promoting investment and innovation in electronic communications networks and service"<sup>6</sup>, and to URCA's stated desire for liberalisation of the sector in The Bahamas to mirror experience from other jurisdictions:

"International experience suggests that regulatory reform and removal of barriers to entry have served to improve sector performance through expansion in network coverage and services, higher investment, improved service quality and cost reflective pricing"<sup>7</sup>.

With respect, SRG believes that the fee structure will inhibit investment, disadvantage the consumer and merely serve to enhance the position of statutory and historical monopolists, who enjoy cash flow from monopoly markets that is not available to new entrants or other operators.

Yours sincerely,



Paul Hutton-Ashkenny

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<sup>5</sup> Licence to Cable Bahamas Ltd., Section 31

<sup>6</sup> Communications Act 2009, section 4(a)(ii)

<sup>7</sup> URCA, Three Year Strategy & Annual Plan 2009-2010, Section 1.3