



# **STATEMENT OF RESULTS**

## **URCA DRAFT ANNUAL PLAN 2017**

**URCA 02/2017**

**Issue Date: 30 April 2017**

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# 1. Introduction

## 1.1 Consultation on the Draft Annual Plan

Section 41(4) of the Utilities Regulation and Competition Authority Act (URCA Act), requires the Utilities Regulation and Competition Authority (URCA) to publish a draft Annual Plan on its website no later than the end of the financial year<sup>1</sup>, giving interested third parties the opportunity to comment on the draft Annual Plan prior to its final publication. On 22 December 2016 and in compliance with this statutory requirement, URCA published its draft Annual Plan for 2017 (Draft Annual Plan) and invited comments from the general public. The deadline for submission of responses was 10 February 2016.

On 24 February 2017, URCA had a stakeholders meeting to further discuss the Draft Annual Plan, including the key projects intended by URCA for 2017, URCA's budget, and an overview of URCA's activities and achievements in 2016. This Stakeholders meeting was attended by representatives of Be Aliv Limited, BTC, Bahamas Power and Light (BPL), Bahamas Energy & Solar and Super Green Solutions. URCA considers the participation by those in attendance at the stakeholder's meeting to be helpful to the further development of its Annual Plan.

URCA's Draft Annual Plan sets out in detail the programme of work URCA proposed to undertake for the forthcoming financial year commencing 1 January 2017 and ending on 31 December 2017.

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

- A Review of URCA's Achievements in 2016;
- URCA's Plan for 2017; and
- URCA's Draft Budget for 2017.

This Statement of Results document provides a summary of written responses to the Draft Annual Plan.

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

URCA received written responses to the Draft Annual Plan from the following stakeholders:

- The Bahamas Telecommunications Company Limited (BTC);
- Cable Bahamas Ltd. (CBL)
- Be Aliv Ltd (Aliv)
- The National Commission for Persons with Disabilities (NPCD); and
- Mr. Vincent Wallace-Whitfield, Counsel & Attorney- at-Law

URCA thanks all respondents to this consultation for their contributions. All comments and recommendations received have been carefully considered by URCA as part of its process to develop the Draft Annual Plan and create an appropriate final Annual Plan for 2017. The final Annual Plan for 2017 has been published concurrently with this Statement of Results, as URCA 03/2017.

## **1.2 Structure of the Remainder of this Document**

The remainder of this document is structured as follows:

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

## **2. Summary of Responses Received**

### **2.1 General Comments**

#### BTC's Response

BTC welcomed the opportunity to respond to URCA's Draft Annual Plan for 2017. It noted URCA's detailed, and what it considers "ambitious" project listing for 2017. BTC considers that the Draft Annual Plan provides for more than the regulator has the capacity to complete.

#### CBL's Response

CBL commented that it was impressed with the equitable and measured manner in which URCA has established regulations relative to cellular liberalisation in order to encourage competition within a level playing field. CBL also urged URCA to respond to competition issues decisively and expeditiously.

#### Aliv's Response

Aliv applauded URCA's work on cellular mobilization liberalization as its most significant achievement of the year 2016 and commended URCA for the comprehensive manner in which it organised and implemented the various relevant regulatory measures and instruments thereby avoiding any potential delay to liberalization.

#### NCPD's Response

The NCPD thanked URCA for the opportunity to respond to URCA's Draft Annual plan 2017. It further commended URCA for its work and achievements during the year 2016 and for providing an opportunity to respond to its progress and plans for the year 2017.

#### Vincent Wallace-Whitfield's Response

With respect to URCA's achievements during 2016, Mr Wallace-Whitfield questioned URCA's statement that its lack of productivity in 2016 resulted from matters outside of URCA's direct control, namely the new responsibility of regulating the electricity sector and the introduction of cellular mobile liberalisation. Mr Wallace-Whitfield opined that URCA does not fully explain what

the unexpected occurrences were, what the matters outside of URCA's control were or the nature of its human resources constraints were, that impacted URCA's ability to carry out significant areas of its plan for two years.

#### URCA's Response

URCA thanks all Respondents for their comments. Further URCA thanks CBL, Aliv and BTC for their continued support of URCA's work during the past year. URCA notes BTC's comments as to the "ambitious" nature of the Draft Plan but considers that with its plans to rebuild regulatory capacity which is well on the way with its recent recruitment exercises, there should be no challenge to completing the projects outlined in the Draft Plan.

URCA notes the comments made by Mr Wallace- Whitfield but disagrees that it did not fully explain the impact of the events and occurrences as outlined in the Draft Annual Plan on many of its projects. Additionally, URCA has outlined the anticipated scheduled completion time for those projects that were not completed in 2016.

## **2.2 Multi-Sector Regulator**

#### CBL's Response

CBL congratulated URCA on becoming a multi-sector regulator. CBL further recognized the substantial workload undertaken by URCA in order to facilitate cellular liberalization notwithstanding the impact on other achievements. CBL also stated that it looks forward to a reprieve in the regulatory fees in accordance with URCA's stated intention that resources will be shared between the sectors "to the greatest extent possible".

#### Aliv's Response

Aliv stated that due to its high level of regulatory fees, it would hold URCA to its commitment to share resources "to the greatest extent possible".

#### BTC's Response

BTC notes that with the establishment of the Utilities and Energy Department there is a move to share resources across that department and the EC department. BTC further encourages URCA to apportion the fees appropriately to each licensee. As it relates to the reduction of its reliance on external consultants, BTC agrees that each sector should rely more on its own professionals and stated that it looks forward to the resulting impact on fees by way of a reduction.

#### Vincent Wallace-Whitfield's Response

In relation to the electricity Sector, Mr. Wallace-Whitfield commented that URCA did not share within the Draft Annual Plan, details relative to how it intends to share its resources between the two sectors it will now regulate.

Mr. Wallace-Whitfield noted that URCA made no reference in the draft Annual Plan to its intentions regarding the licensing of electricity suppliers in the Family Islands and mentioned that these entities are as much susceptible under part IV and the second Schedule to the provisions of the Electricity Act as are Bahamas Power and Light or Grand Bahama Power Company.

#### URCA's Response

URCA notes Aliv's, CBL's, and BTC's comments relative to URCA's intent to share resources between the Electronic Communications Sector and the Electricity Sector. URCA stands by its commitment as stated in the Draft Annual Plan.

In relation to Mr. Wallace-Whitfield's comments, URCA reiterated that it will, to the greatest extent possible while ensuring the maintenance of quality, share personnel and resources between the newly regulated sectors. URCA anticipates that the greatest savings would be experienced amongst its administrative support staff and other resources, followed by significant sharing of legal and economic regulatory staff. URCA has also shared details as to how it intends to staff the new Utilities and Electricity Department.

Regarding the comments about licensing electricity suppliers in the Family Islands, this matter will be addressed in URCA's consultation on licensing categories. URCA notes, however, that most of these suppliers are franchisees of BPL, and will provide electricity consistent with BPL's

licences. Therefore URCA considered it sensible and appropriate to focus its activities during 2016 on the major public suppliers.

## **2.3 URCA's 2017 Draft Budget**

### CBL's Response

CBL noted the increase of capex and depreciation expenses as a result of URCA's proposed acquisition of premises located at Frederick House. CBL noted that despite the age of the building and the high cost of rental premises in the downtown area, they remain cautiously optimistic. CBL expressed its continued concern that URCA's budget is too general and further requests that the draft budget be broken out into sub cost centres in order to increase transparency and accountability. CBL noted that URCA's conference budget continues to increase despite the reduction in staff.

CBL further commented on what it deems a lack of transparency and accountability in the Utilities Appeal Tribunal fee calculation and calls for an itemized budget to be presented to Licensees. CBL stated that in future, they look forward to budgets that are more predictable and constrained.

### Aliv's Response

Aliv also highlights the increase in the 2017 Capital Expenses budget due to the proposed acquisition of Frederick House. Additionally, Aliv noted the 25% increase in general and administrative expenses which URCA attributed to funding of contributions to international and regulatory bodies and professional membership subscriptions. Aliv encouraged the sharing of these costs.

### Vincent Wallace-Whitfield

Mr Wallace Whitfield noted that URCA, in its Draft Annual Plan did not include the level of remuneration to be received by non-executive and executive members for the forthcoming year, as required by statute. Mr. Wallace-Whitfield also noted that URCA did not mention the surplus income that URCA returns to the Government in accordance with section 37 of the URCA Act.



### URCA's Response

CBL's comments regarding URCA's budget are noted by URCA. URCA will consider providing greater granularity in its draft budgets moving forward. URCA reminds CBL that the increase in budget does not contemplate a decrease in URCA's staff but an increase, the reduction in staff is reflected in URCA's actual financial results for 2016, which reflected decreased expenditure related to the ECS. CBL is also reminded that the increase in budget for 2017 relates entirely to the inclusion of a new regulated sector, and will be entirely offset by increased collection from that sector. The budget for the ECS has decreased in 2017 by 10%.

Finally, URCA notes that the UAT published its budget on the 29<sup>th</sup> December 2016, which was the basis on which UAT Fees have been collected by URCA in accordance with the UAT Act. URCA's Annual Plan and Annual Reports do not include or report on the UAT's financial or other activities.

In relation to Mr. Wallace Whitfield's comments, firstly, URCA notes that by oversight non-executive and executive remuneration were not separately outlined in the Draft Annual Plan. URCA apologizes for this oversight and has included the information in the final Annual Plan. As it relates to reporting on any surplus which URCA has remitted to Government in accordance with section 37 of the URCA Amendment Act 2013, that information is not available until after the publication of the draft Annual Plan. It is properly included in URCA's Audited Financial Statements which are published together with URCA's Annual Report. URCA continues to refine its budget to ensure that it collects no more than is required to enable URCA to carry out its functions.

## **2.4 URCA's Regulatory Capacity and Human Capital**

### BTC's Response

BTC encourages URCA in its initiatives to recruit, train and develop its employees due to the benefit it brings to the sector. BTC, in noting URCA's intent to increase its staff complement from 19 to 36, encourages URCA to obtain talent locally and to continually educate and train its staff. Notwithstanding the addition of the Utilities and Energy Department, BTC questioned how

arrived at the decision to double its staff compliment and requested further information relative to its decision.

#### CBL's Response

CBL noted the change in leadership at URCA, its reorganization and the need for recruitment, particularly in the utilities and Energy Department. CBL encouraged URCA to employ persons with an innate ability to become knowledgeable in regulations and to engage specialists internationally with a view achieving knowledge transfer.

#### Vincent Wallace-Whitfield

Mr. Wallace-Whitfield noted that there is no explanation in the Draft Annual Plan of URCA's anticipated growth in staff in 2017, nor is there an explanation as to the deployment of the additional staff members between the sectors.

#### URCA's Response

URCA thanks BTC for the encouragement in its recruitment exercises.

In response to BTC's and Mr. Wallace-Whitfield's comments and question regarding URCA's increase in staff compliment. In that regard, URCA reminds the respondents that URCA lost seven (7) staff members in 2016 for various reasons. The resulting vacancies will be filled in 2017. Of the other intended hires, seven (7) relate to staff increases resulting directly or indirectly from URCA's assumption of responsibility for the ES, and the remainder relate to positions which have existed in URCA's structure for some time and remained vacant. URCA continues to struggle to find suitably qualified candidates for certain regulatory positions due to the lack of persons with regulatory expertise. Notwithstanding URCA's intent to train and upskill persons, there remains a need for senior experienced staff to act as mentors, which is extremely challenging to fill in the local market.

## **2.5 Promoting Affordable Access to Services throughout the Bahamas**

#### BTC's Response

BTC agreed that the previous universal service obligations are no longer appropriate in a rapidly evolving ECS. BTC commented that it looks for to URCA's review of the ECS before making its final decision on USOs.

#### NCPD's Response

The NCPD noted URCA's proposal to suspend work on the universal service document until completion of its review of the framework and the ECS policy. The NCPD encouraged URCA to place the necessary priority on this project due to inevitable impact accessibility and affordability of ICT products will have on persons with disabilities. The NCPD shared its concern that many persons with disabilities are currently disenfranchised by the lack of available and accessible ICT products and services and urged URCA to give sufficient consideration to the telecommunication and ICT needs of persons with disabilities as it commences its review of the universal service framework. The NCPD also drew URCA's attention to the obligations of the Persons with Disabilities (Equal Opportunities) Act and the UN Convention on the Rights of Persons with Disabilities.

The NCPD reminded URCA that there is currently no means by which persons who are hearing impaired can access emergency services telephone numbers, i.e., 919 and/or 911. In noting Section 41 of the Disabilities Legislation, which deals with Telephone Services, the NCPD highlighted the need for strengthening those provisions so that telephone operators are required to provide persons who are deaf or hearing impaired with accessibility to emergency services telephone numbers. The NCPD requested that URCA gives due consideration to this issue, even prior its commencement of its review of the universal services framework, by encouraging telephone providers to establish access to emergency service telephone numbers for persons who are deaf or hearing impaired.

Additionally, the NCDP noted URCA's ongoing activities related to reviewing and investigating complaints made under the Code of Practice for Content Regulation. The NCDP encouraged URCA to strengthen its code and to require television broadcasters to provide captioning of certain

local television programs to enable persons who are deaf or hearing impaired to have access to those local and national programs.

#### Vincent Wallace-Whitfield

Mr. Wallace-Whitfield noted his distress at URCA's plan to discontinue its work on the Universal Service Obligations, as he felt that URCA was abandoning the existing provisions without ensuring compliance by the existing universal service providers.

#### URCA's Response

URCA appreciates all comments received regarding universal service obligations and the work URCA has done in an effort to promote affordable access to electronic communication services throughout the Bahamas.

In particular, URCA notes the comments submitted by the NCPD relative to the needs of those persons in Bahamian society that are hearing impaired or deaf and the challenges faced in accessing emergency numbers. URCA considers this issue to be of substantial importance to consumers and will seek to ensure that its review and revision of the universal service framework is done with alacrity. Additionally URCA notes that while currently the Code of Practice for Content Regulation encourages licensees to provide access services in their programming, the Code sets out a requirement to provide access services as it relates to news and emergency or disaster announcements.

URCA will address some of the issues raised by NCPB in its meetings with the Content Regulation Industry Group in the course of its next review of the Code. Some of the comments by NCPD highlight the very reason why URCA considered it appropriate to cease work on the existing transitional provisions, which fail to provide the ability to tailor the universal service framework to meet the actual needs of person in The Bahamas. URCA is determined the resolve this issue through a more considered universal service framework which will provide real benefits in a targeted, efficient and achievable manner.

URCA notes the comments by Mr. Wallace Whitfield, which again highlight the challenges with the existing framework. The transitional provisions in the Comms Act, create a framework which requires duplicated universal services throughout The Bahamas, which will apply disproportionately high resources to solve small pockets of underservice. URCA considers that to be inimical to the best interests of The Bahamas, and is seeking to formulate a more efficient framework, starting with advising the Government on appropriate changes to the ECS Policy.

## **2.6 URCA's Key Projects for 2017**

### BTC's Response

With regard to Price Cap Remedies in retail markets, BTC thanked URCA for its progress made thus far in the implementation of price caps. BTC commented on the value it places on flexibility in mobile services prices and was of the view that such flexibility would help to bring new products into the market.

### Aliv's Response

Aliv noted its anticipation of being able to contribute to the new sector policy for 2017-2020 when the existing ECS Policy expires in April 2017. Aliv also highlighted the positive impact of the annual Girls in ICT Day on the sector in general. In relation to URCA's international engagement, Aliv acknowledged URCA's role and the importance of establishing the Bahamas as a vital part of the international discussion on ICT. Additionally Aliv stated that it looks forward to participating in the consultation on Net Neutrality and OTT Services.

### URCA's Response

URCA notes BTC's comments regarding the implementation of price caps remedies in retail markets and thanks BTC for its support.

URCA appreciates Aliv comments relative to its key projects for 2017. URCA agrees with Aliv's view that the Bahamas ought to be an integral part of the wider discussion on ICT and looks forward to Aliv's continued support in this regard.

## **2.7 Consultation Procedure Guidelines**

### BTC's Response

BTC highlighted the importance of the expectations a regulator places on a licensee during a consultative process and expressed its eagerness to receive URCA's final document on the Consultation Procedure Guidelines. BTC noted the delay in completing this project and stated that the guidelines are necessary to ensure that licensees and other stakeholders have a voice with respect to the regulators decisions. Further, BTC closely links this project with the review and revision of URCA's website and urges URCA to devote the necessary time and resources to this project.

### URCA's Response

URCA thanks BTC for its comments. URCA considers its engagement with the public, licensees and stakeholders a high priority and looks forward to working with BTC and other stakeholders in establishing and adhering to the final guidelines. URCA notes that the final Consultation Procedures were published on 13 April 2017, and apologizes for the delay in publication of this important measure.

## **2.8 Evaluating our Effectiveness**

### BTC's Response

BTC highlighted its pleasure at URCA having begun evaluating its effectiveness through the use of KPIs. BTC expressed the view that licensees ought to be consulted on the process of determining which KPIs should be set to enable licensees to properly evaluate URCA's performance. BTC suggested that such an approach would avoid any inherent bias and would ensure a fair and objective appraisal. BTC further noted that a review of Table 5 of the Draft Annual Plan showed that some of the KPIs listed were immeasurable and suggested an amendment. BTC voiced its long held concern at the time taken to resolve complaints and reiterated its suggestion that URCA establishes a KPI to reflect timelines to be followed in handling of complaints.

### URCA's Response

BTC's comments regarding URCA's KPIs are noted by URCA. URCA has in the past indicated that it has no opposition to licensees conducting their own evaluation of URCA for consideration. URCA considers stakeholder and industry feedback on URCA's performance to be important and maintains its position that such feedback is welcomed at any time.

### **3. Conclusion and Next Steps**

The publication of this Statement of Results document formally concludes the public consultation on URCA's Draft Annual Plan for 2017. URCA thanks those who provided feedback on the Draft Annual Plan. With the exception of the above-mentioned changes, URCA has made the necessary changes to the Annual Plan, based on comments received.

URCA's Final Annual Plan for 2017 was published on URCA's website concurrently with this Statement of Results, as URCA 03/2017. A public oral hearing will be scheduled at a later date to present and discuss the Annual Plan and the 2016 Annual Report. URCA will publish further details for the public oral hearing on its website and in the local media once finalised.