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August 17, 2017

Mr. Donavon Dorsett
Acting Director of EC Sector
Utilities Regulation & Competition Authority
Frederick Street
Nassau, Bahamas

Dear Mr. Dorsett,

Re: CBL Response to URCA Consultation on Measures for the Collection and Reporting of Market Data by Specified Licensees in the Electronic Communications Sector [ECS 05/2017] and Addendum to Document ECS 05/2017 issued on 3 August 2017

Cable Bahamas Ltd. (CBL) and its subsidiaries, particularly Systems Resource Group Limited, hereby submit comments in response to the Utilities Regulation and Competition Authority's (URCA's) issuance of an addendum relative to the captioned consultation document for URCA's consideration.

While CBL notes that responses to the consultation were due on 15 August 2017, CBL advises URCA that no significant changes were made to CBL's original submission to URCA on 31 July 2017.

CBL apologizes for the delay in submission.

Yours sincerely,



Felicity L. Johnson
General Counsel & Company Secretary

Enc.

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**Response to Consultation on Measures for the
Collection and Reporting of Market Data by
Specified Licensees in the Electronic
Communications Sector**

ECS 05/2017

Submitted to

The Utilities Regulation & Competition Authority

17 August 2017



1. General Comments

Cable Bahamas Ltd. (CBL) thanks the Utilities Regulation and Competition Authority (URCA) for the opportunity to comment on its proposals to require operators to submit statistics on market data, as set out in its consultation paper (“Consultation on Measures for the Collection and Reporting of Market Data by Specified Licensees in the Electronic Communications Sector” ECS 05/2017 and Addendum to Document ECS 05/2017 “Consultation on Measures for the Collection and Reporting of Market Data by Specified Licensees” published on 3 August 2017).

This follows a consultation carried out in 2016 (ECS 19/2016), when URCA proposed a modest increase in the present reporting requirements. However, CBL is dismayed to see that the proposals in URCA’s current consultation are far more burdensome and intrusive than URCA’s previous proposals. Whereas URCA’s 2016 proposals would require CBL to collect, validate and submit about 90 pieces of information per year to URCA, the current proposals would require CBL to collect, validate and submit over 1,800 pieces of information per year.

As a result, CBL cannot support URCA’s current proposals. CBL is of the view that in increasing its data requests by 20 times, URCA has gone against the intentions of the Communications Act 2009 (Comms Act) that there should be light touch regulation in The Bahamas. The Act states that the objectives of electronic communications policy in The Bahamas are:

*“To enhance the efficiency of the Bahamian electronic communications sector...
To promote investment and innovation ...” (Section 4 (a) (i) and (ii) of the Comms Act)*

However, URCA’s new proposals will add to CBL’s cost base, thereby reducing its efficiency and diverting investment.

URCA is required under the Act to have:

“...due regard to the costs and implications of those regulatory and other measures on affected parties...” (Section 5 (b) (ii) of the Comms Act).

However, URCA has failed to carry out this assessment. It has made no attempt to identify or estimate the costs of its requirements on the operators, and so has not paid any regard to the impact of the additional costs on the affected operators. It has claimed the same benefits will accrue to its present proposals as to the 2016 proposals, but has not presented any additional benefits for a twenty fold increase in the workload for the operators. URCA’s failure to conduct a cost benefit analysis signifies that URCA has not carefully considered the financial impact of its proposals on operators, contrary to section 5 of the Comms Act.

All decisions implemented by URCA must comply with Section 5 (c) of the Act:

“Regulatory and other measures shall be efficient and proportionate to their purpose ...”

CBL considers that URCA's proposals for market data collection are neither efficient or proportionate. They impose unnecessary additional costs on operators, bring no benefits to the sector, and are excessively intrusive and labour intensive.

In the 2016 response, CBL asked URCA to provide more details on what information it intended to publish, and to consult further with the operators to ensure that commercially confidential information was not put into the public domain. CBL is very disappointed that URCA has not paid any attention to this request, and has not provided any more detail on what it intends to publish in the current consultation paper.

In conclusion, CBL asks URCA to withdraw the current consultation paper, and to revert to its 2016 proposals.

2. CBL's Responses to URCA's Questions

Question 1: Do you agree with URCA's justification for its new reporting procedures for the collection of market data? If not, please state why not?

CBL does not agree with URCA's justification for the collection of market data.

URCA provides the following three reasons for changing the collection of market data:

1. Input to regulatory decisions

CBL agrees that good data is important in regulatory decision making. However, this should be collected from the operators on a decision by decision basis, not on the "nice to have" basis proposed in this consultation. This will ensure that URCA has thought through exactly what data it requires and can explain and justify its requirements to the operators, and is likely to use the data provided by the operators. Under the proposed system, it is highly likely that URCA will not use the data provided because there is no direct need for it, resulting in a waste of resources for both the operators and URCA. URCA has also failed to provide examples of how past regulatory decisions would have been aided (either in terms of time or accuracy) by the availability of more detailed market data. This is, quite possibly, because such decisions require the one-off collection of detailed and tailored data in any event, thus negating the need to have data available 'off-the-shelf' on an ongoing basis.

This is particularly the case for Pay TV services. For example, CBL cannot understand what regulatory decisions URCA will make using data on the sale of television sets and other "CPE" equipment. As a second example, CBL does not expect that URCA will derive any useful understanding about the market for video on demand services from any data provided by CBL, given the substantial use made of video on demand services available over broadband (e.g. Netflix etc).

2. Other NRAs collect market data

In seeking to copy the practice of other national regulatory authorities, URCA fails to consider the differences between The Bahamas and other countries, both in terms of the competitive dynamics of the market and in terms of the relatively small size of The Bahamas. The electronic communications market in The Bahamas consists of two operators in fixed communications, two operators in mobile communications, and two operators in the case of Pay TV services. URCA proposes to publish only aggregated data, but a simple calculation enables one operator to know the detailed business of the other operator, thus providing it with commercially confidential and sensitive information. For Pay TV, all published data is for CBL's operations. For a quoted company, this may well breach the disclosure requirements of financial markets.

Furthermore, by basing its list of requested market data on the information collected in other countries, URCA has paid no regard to the reason that the information is collected in a specific country. An example is the requirement for volume and financial information on CPE equipment and handsets. While in some countries equipment sales may have been an issue because of the tying of equipment sales and telephone services, in The Bahamas the

handset and CPE equipment markets are competitive, and URCA has no reason to intervene, or to collect information, about them.

URCA also quotes the data requests of the International Telecommunications Union (ITU) as a reason for its market data requests. However, URCA has no duty to provide information to the ITU, and indeed most countries do not provide the full range of information requested by the ITU. Moreover, CBL notes that URCA's usual practice has been to forward the ITU's information request to operators for operators to respond to by the specified deadline. CBL notes that URCA has failed to mention this practice in its consultation document. Moreover, for its part, CBL has consistently complied with such requests and notes that URCA has not provided any justification for a change in the status quo.

CBL notes that the ITU only requires the number of subscribers for Pay TV services, and that other national regulatory authorities do not publish detailed information on Pay TV services. It therefore asks URCA to review its information requirements for Pay TV data. It appears that URCA has simply "copied and pasted" its data requirements from the other telecommunications sectors to Pay TV without any consideration of why it needs the data on PayTV.

3. The market in The Bahamas is changing

URCA notes that several innovations are taking place in the Bahamian market, for example the entry of Aliv, and the development of bundles. However, these developments provide no justification for URCA to collect market data. URCA needs only to intervene when market forces are insufficient, following the identification of specific problems. These innovations are an example of the success of market forces, and there is no need for URCA to collect data about them until a specific problem is identified.

Question 2: Do you agree with URCA's new reporting format for the collection of market data? If not, please state why not?

CBL does not agree with the reporting format proposed by URCA. It considers that the requests, over and above the data on subscriber numbers and revenues currently provided to URCA, must be justified on a "line by line" basis. URCA should identify both the specific use that URCA will make of the data, and the date when URCA will use it. If URCA cannot justify its requirements in this way, the data can only be classified as "nice to have" rather than to meet a specific requirement.

For example, CBL invites URCA to justify:

- Separation of Pay TV customers into business and residential segments
- Duplication of volume and revenue data for bundled services in fixed, internet and Pay TV data sheets
- Data on CPE equipment
- Data on calls to the United States, United Kingdom, Canada, Haiti and Jamaica
- Calls to CLASS features and ancillary services
- Data on calling card services

- Data on wholesale broadband access services, given that many of these are not available in The Bahamas.

CBL considers that URCA should not, as a matter of policy, impose the costs of collecting, validating and submitting data on operators unless it can demonstrate a real need for this data. URCA has, so far, failed to do this.

CBL also questions why URCA requires data on tax payments in the annual reporting requirements for all licensees, and asks to which of URCA's statutory duties this information relates.

Question 3: Do you agree with URCA's proposal to receive quarterly and annual market data? If not, please state why not?

CBL considers that this question ignores the requirements URCA is placing on the operators. URCA requires the operators to collect and submit **monthly** data, and whether this is sent to URCA on a quarterly or annual basis is immaterial. URCA's consultation paper does not acknowledge that the requests are for monthly data, and produces no justifications for this format. Given the variations between each month, CBL cannot see how URCA will make any use of monthly data, or indeed of quarterly data.

CBL considers that URCA should remove its requirement for monthly data and ask operators to submit data on an annual basis based on operators' financial year, instead of four times a year in order to limit the burden on operators.

Question 4: Do you agree with URCA's proposal to publicise aggregated market data? If not, please state why not?

URCA has not produced any proposals for which data it intends to publish. CBL asked URCA to do this in the previous consultation, and is concerned that URCA has paid no attention to this request in the current consultation. CBL asks URCA again to specify which information it intends to publish and consult the operators properly on these proposals.

CBL objects to URCA's proposals to publish aggregated data, especially financial data. In a two-operator market, a simple calculation allows one operator to know the detailed performance of the other on a quarterly basis. In the Pay TV market, all published data is clearly for CBL. This information is commercially sensitive; for example, one operator will be able to see the impact of a specific marketing campaign on the other. URCA's proposals to publish market data three months after the end of the relevant quarter does not satisfy this objection to URCA's proposals.

BTC's parent company is traded on the US stock exchange (NASDAQ) and CBL's shares trade locally on The Bahamas International Securities Exchange (BISX). Disclosure of sensitive financial information may contravene rules of both relevant stock exchanges. As mentioned above, in a two-player market, it would be relatively easy for one operator to extract its own information from published data and gain access to sensitive and detailed volume information regarding the other operator's financial performance. This would be particularly

detrimental to CBL since its shares trade locally in The Bahamas and persons with access to CBL's information would gain an unfair advantage over its other shareholders.

Question 5: Do you agree with URCA's implementation timelines for the new measures? If not, please state why not?

CBL does not accept the timetable proposed by URCA and is of the view that quarterly reporting is onerous and unnecessary. It considers that URCA must undertake a serious rethink of its proposals, and undertake meaningful discussions with the operators about the practicality and proportionality of its proposals. This rethink will take some months, making URCA's timetable impracticable.

CBL also wishes to point out that URCA requests financial data on a calendar year basis, while the operators report on a financial year basis. It would clearly reduce duplication if URCA sought financial information on the basis of financial years.

Question 6: Do you agree with URCA's assessment of the regulatory options considered? If not, please state why not?

CBL considers that URCA's assessment of the costs and benefits of the regulatory options is cursory and entirely inadequate. In particular:

- URCA has made no effort to engage with the operators so that it can understand the costs imposed on the operators, and therefore has no estimate of the costs of its proposals
- It has produced no estimate of the benefits of its preferred option over and above the current practice
- It has not considered the option set out in its 2016 Consultation Paper; at the time it was a valid option, and URCA should analyse the costs and benefits of this option compared to the others.

It is therefore in no position to claim that:

"... the incremental costs incurred by URCA's licensees that are related to the collection and reporting of the required information will be more than off-set by the benefits to be derived from the new measures." (page 14).

URCA should evaluate the following options:

- Collection of information on an "as needed basis"
- Collection of a reduced set of market data (for example, as proposed by URCA in 2016).

As part of its rethink of the proposals in this Consultation Paper, URCA should consider much more carefully the impact of its proposals on operators, whose cost base is under constant pressure in a competitive market. Any additional cost imposed on the operators by

URCA is paid by consumers in the form of higher prices, to the detriment of customers and the economy of The Bahamas.

Respectfully submitted

On behalf of CBL

RESERVATION OF RIGHTS

CBL expressly reserves all rights including the right to comment further on any and all matters herein and categorically states that CBL's decision not to respond to any matter raised herein in whole or in part, or any position taken by CBL herein does not constitute a waiver of CBL's rights in any way.