

## PRESS RELEASE

5 April 2018

### **Final Determination and Order issued to the Bahamas Telecommunications Company Ltd. in the Matter of Breaches of the Ex-Ante Retail Pricing Rules and Other Measures (ECS 02/2018)**

The Utilities Regulation and Competition Authority (“URCA”) has published a Final Determination and Order to the Bahamas Telecommunications Company Ltd. (“BTC”) relating to breaches by BTC of the ex-ante retail pricing rules and other regulatory measures. Copies of URCA’s Final Determination may be downloaded from URCA’s website at [www.urbahamas.bs](http://www.urbahamas.bs). It should be noted that some information has been redacted from the published document on the grounds of commercial confidentiality.

On 19 October 2017, URCA issued a Preliminary Determination and Draft Order to BTC entitled “*In the matter of: Breach of Ex-ante Retail Pricing Rules and Other Measures*” (ECS 14/2017). The Preliminary Determination was in furtherance to a complaint by Be Aliv Limited (“Aliv”) submitted to URCA on 28 March 2017 against BTC. Aliv’s complaint included allegations that BTC’s tariff offers for mobile services do not comply with a number of the procedural aspects of the Ex-Ante Retail Pricing Rules (“the Rules”). During its investigation, URCA identified a series of breaches committed by BTC during the period of November 2016 through June 2017. Both BTC and Aliv were invited to submit responses by 18 November 2017. URCA received a submission from BTC however Aliv informed URCA that it did not intend to make any representations.

URCA determined that BTC breached Condition 35 of its Individual Operating Licence (IOL), the Retail Pricing Rules, and the Consumer Protection Regulations, in that BTC:

- (i) failed or refused to publicise all relevant terms and conditions in the advertisements for a service;
- (ii) failed or refused to publish all charges (including off-net charges) and other non-price terms and conditions for a service on its websites;

- (iii) offered Full Length Promotions beyond the maximum time period allowed for such promotions;
- (iv) failed or refused to display on its websites and other advertising mediums accurate, true, up-to-date information on all material aspects for subscribing to a service; and
- (v) failed or refused to comply with directives from URCA pursuant to the foregoing obligations.

Consequential to the above, URCA directed BTC to:

- (a) Conduct periodic reviews of its main website and other advertising media in order to identify any discrepancies in the marketing and advertising of its services. The review should focus on updating of all platforms as necessary in order to ensure accuracy and consistency in the information published across its web platforms and other advertising media. Clearly state that there is no differential between its on-net and off-net rates on its prepaid mobile plan webpage, and include the definition of “cross net” in the FAQ section of its website if it continues to use the term;
- (b) At all times abide by the approval and notification procedures specified in the Rules and other similar obligations or regulatory measures;
- (c) Ensure that all promotions marketed to the public are clearly stated as promotions on its website, its mobile platform and all other marketing/advertising media;
- (d) Prominently display (on its website, its mobile platform and all other fora) both the start and end dates of each promotions;
- (e) Discontinue the sale and marketing/advertising of a promotion on the end dates notified to URCA by BTC, and approved or acknowledged by URCA;
- (f) Ensure that the terms and conditions for all promotions and other price and service changes are in line with the Rules, the Comms Act, its IOL, the Sector Policy and, its notification or application for approval along with any regulatory measure issued by URCA, as necessary;
- (g) Publish all relevant terms and conditions for all promotions and other price changes that are subject to a notification or approval; and

- (h) Pay a fine under section 109 of the Comms Act in the amount of \$30,868.56 no later than thirty (30) calendar days from the issuance of this Order. Payment of such fine shall be as directed by URCA.

In order to aid with the general understanding of this Final Determination and for ease of reference, URCA lists below questions that the general public may have and provides answers to these questions.

### **General information regarding URCA's Final Determination (ECS 02/2018)**

#### **What is this document about?**

This document is a determination by URCA imposing specific corrective actions and a financial penalty on BTC for breaching relevant obligations in its Individual Operating Licence, the Retail Pricing Rules and the Consumer Protection Regulations. URCA Preliminary Determination, issued on 19 October 2017, presented URCA's preliminary findings from its investigation and allowed BTC and Aliv the opportunity to comment on the findings or any related matter. The Final Determination, issued to BTC on 22 March 2018 and published on 6 April 2018, presented the summary of the comments received, URCA's responses to the comments, and URCA's final decisions on the matter.

#### **Background of the Retail Pricing Rules**

In 2010, URCA imposed several obligations on licensees deemed to have significant market power (SMP) in specific retail markets, namely BTC and Cable Bahamas Limited ("CBL"). The purpose of the obligations was to prevent operators from using their dominance in a market to harm consumers and/or competition. One of the obligations was retail price regulation which was applied to BTC's retail fixed voice and retail mobile voice and data services, and CBL's SuperBasic package (now titled REVPrime). In April 2010, URCA published the Retail Pricing Rules (ECS 12/2010), also known as the Rules, which outlined the procedures for SMP operators to abide by when introducing new Price Regulated Services and/or changing the prices or terms and conditions of Price Regulated Services. The Rules were revised by URCA in 2014 to streamline the process and add more clarity.

#### **What is the purpose of the Retail Pricing Rules?**

The Rules were designed to provide URCA with the ability to prevent SMP operators from using their significant market power to engage in excessive pricing, predatory pricing (pricing too low so that other

operators would not be able to profitably compete) or undue discrimination (unfair treatment between different segments of customers). The Rules also provide guidelines for SMP operators to make consumers fully aware of new services and/or changes in prices or non-price terms and conditions.

### **What is a Special Promotion?**

A Special Promotion is a temporary change in the price and/or non-price terms of existing services in the market. A Short Term Promotion has a duration of no more than seven (7) consecutive calendar days or for seven (7) non-consecutive calendar days within a period of 14 calendar days. A Full Length Promotion has a duration of more than one calendar week or more than seven (7) non-consecutive calendar days within a period of 14 calendar days, but for no more than 90 calendar days.

### **What is the purpose of the Consumer Protection Regulations?**

The Consumer Protection Regulations consist of general regulations relating to the protection of consumers. It addresses matters including but not limited to billing and credit management, customer quality of service, consumer sales, contracts and services, consumer complaint handling and advertising.

### **How do the Retail Pricing Rules and Consumer Protection Regulations differ?**

The Retail Pricing Rules only apply to price regulated services. An SMP operator may offer services which are not subject to price regulation. The Consumer Protection Regulations apply to all holders of Individual Operating Licences (IOLs) and Class Operating Licenses Requiring Registration (COLRRs) in The Bahamas. The Retail Pricing Rules and the Consumer Protection Regulations overlap with respect to certain stipulations on the provision of information and the accuracy of advertising .