



# **FINAL DETERMINATION AND ORDER**

**Issued to: Cable Bahamas Limited**

**In the matter of: Breaches of the Retail Pricing  
Rules and Other Measures**

**Issue Date: 21 November 2019**

**ECS 71/2019**

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## 1. Introduction

This document concludes the Utilities Regulation and Competition Authority's ('URCA') investigation into Cable Bahamas Limited's ('CBL') compliance with the Retail Pricing Rules and other obligations or regulatory measures.

On 13 September 2019, URCA issued a Preliminary Determination and Draft Order to CBL *In the matter of: Breaches of the Retail Pricing Rules and Other Measures* (ECS 68/2019). The document stemmed from CBL's replacement of eight television channels from its REV TV line-up effective 14 June 2019. CBL did not notify URCA until the day before the effective date, i.e., 13 June 2019, and CBL only notified subscribers on the day when the changes came into effect. The affected TV packages along with the channels that were removed, and their respective replacements are outlined in Table 1 below. Table 1 is based on CBL's initial 13<sup>th</sup> June letter in addition to its 31 July 2019 correspondence to URCA in which CBL presented data to show that a significant number of its pay TV subscribers were affected by the channel changes.

**Table 1. Channels removed from CBL's REV TV line-up**

Channel Number	Channel Removed	Channel Replacement	Affected Package
465	USA	ION TV	PRIME
314	Freeform	Escape TV	PRIME Extra
359	TV Land	Heroes and Icons	PRIME Extra
305	Sprout	PBS Kids	PRIME Extra
311	Nicktoons	Qubo	PRIME Extra
487	Hallmark	ION Life	PRIME Extra
586	Independent Film Channel	MOVIES!	PRIME Extra
720	Tennis Channel	Quest TV	PRIME Sports

Following the changes, URCA opened an investigation to determine whether CBL had breached the Retail Pricing Rules, Consumer Protection Regulations, and its Individual Operating Licence (IOL). URCA set out its initial findings from the investigation in the Preliminary Determination which alleged that CBL did not provide subscribers with the requisite minimum notice period as specified in its obligations, did not obtain URCA's written consent prior to making the changes, and did not update its website to reflect the changes. CBL submitted its response to the Preliminary Determination on 10 October 2019.

Having regard to the regulatory framework and in accordance with section 100(2) of the Communications Act, 2009 ('Comms Act' or 'the Act'), URCA issues this Final Determination and Order whereby URCA has delineated a number of measures that CBL must take to remedy or rectify the contravention, or to prevent a contravention of the same or a similar kind from being repeated.

The remainder of the document is set out as follows:

- Section 2 summarises the regulatory framework relevant to this Final Determination and Order;
- Section 3 summarises and responds to CBL's submission to the Preliminary Determination;
- Section 4 outlines URCA's Final Determination consequential to its investigation into CBL's conduct; and
- Section 5 outlines URCA's Order consequential to its investigation into CBL's conduct.

## 2. Regulatory Framework

To recap, URCA is the regulator and competition authority for the electronic communications and electricity sectors in The Bahamas. The Comms Act provides a modern framework for regulation and competition in electronic communications markets. URCA is tasked under the Act to carry out various duties and functions in fulfilment of its statutory mandate, including issuing regulatory and other measures to further its principal objectives.

Sections 99(1)(a) and (b) of the Act collectively prescribe that if on its own motion, URCA has reason to believe that a determination is necessary, it may make determinations relating to (amongst other things):

- any obligations on a licensee regarding the terms or conditions of any licence, including obligations in licence conditions and regulations; and
- any activity set out in the Act, and where the Act provides for URCA to “determine” or “to make determinations” as is the case under section 39(1).

Pursuant to section 99(2) of the Comms Act, in making any determination, URCA must comply with section 11 which requires URCA to afford persons with sufficient interest a reasonable opportunity to comment on its proposals.

Section 8(1)(j) of the Comms Act confers on URCA the power to, “conduct inquiries, investigations and oral hearings.”

Under section 9 of the Comms Act, URCA may investigate one or more of the following:

- (a) any contravention;
  - (b) any alleged contravention; and
  - (c) any circumstances where it has grounds to suspect a contravention,
- of any provision of this Act and any regulatory or other measure issued under this Act, including any licence issued under this Act.

URCA is empowered to “impose conditions and penalties by order as specified in sections 95 to 98” by virtue of section 9 of the Comms Act. If URCA finds that a breach has occurred or is occurring, it may direct the licensee to comply with relevant licence conditions and/or other obligations, including imposing financial penalties of up to 10% of the licensee’s relevant turnover.<sup>1</sup>

A cornerstone of URCA’s mandate is to promote the interests of existing and future consumers in The Bahamas in relation to the electronic communications sector (ECS). Integral to the foregoing is URCA’s ability to ensure that licensees abide by their licence Conditions and obligations, including other provisions of the Comms Act and/or any other regulatory measures that URCA may issue from time to time. Indeed, URCA expects licensees to comply with their obligations at all times. This is especially as it relates to SMP operators. As such, URCA’s position is that whenever an SMP licensee operates in contravention of its obligations, the appropriate regulatory action or other measures should be taken, where necessary.

URCA assessed CBL as having significant market power (SMP) in the provision of pay television services.<sup>2</sup>

Condition 35 (Part G) of CBL’s Individual Operating Licence (IOL) requires it to do the following:

- 35.1 The SMP Licensee shall publish charges, terms and conditions, including bundled charges, terms and conditions . . . for all Carriage Services related to the markets in which it is determined or presumed to have SMP.
- 35.2 The SMP Licensee shall publish any amendments to the charges, terms and conditions published under Condition 35.1, including charges, terms and conditions for any new services, within ten working days of the time that the amendment comes into effect.

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<sup>1</sup> Section 109(1) of the Comms Act.

<sup>2</sup> ECS 14/2014 “Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under section 39(1) of the Communications Act, 2009” can be found at <https://www.urcabahamas.bs/wp-content/uploads/2017/02/ECS-14-2014-Assessment-of-Significant-Market-Power-in-the-Electronic-Communications-Sector-in-The-Bahamas.pdf>.

35.3 Publication referred to in Condition 35.1 shall be effected by placing a copy of the information on any relevant website operated or controlled by the SMP Licensee.

...

35.5 The SMP Licensee shall provide Carriage Services at the charges, terms and conditions published under this Condition, and shall not depart from those charges, terms and conditions either directly or indirectly.

The Retail Pricing Rules establish an ex-ante notification and approval framework to which CBL's REV TV Prime is subject to. Under the Rules, any changes in the prices or terms and conditions for REV TV Prime are governed by the procedures described in ECS 06/2014. In particular, the framework provides details on the application, notification, and review and approval procedures, alongside details on the information and the timeframes within which URCA will judge an application or notification. Consistent with URCA's central objectives, the Rules, in part, aim to promote transparency in the marketing (advertising) of communications services and to ensure customers make informed choices.

Additionally, the Rules prescribe the types of price or service changes that SMP operators may implement on their networks, alongside obligations relating to the communication of tariff offers, as follows:

The SMP operator must first obtain URCA's written approval before introducing any changes to non-price terms and conditions for Price Regulated Services that could be expected to affect either the effective price paid by consumers or the costs incurred by the SMP operator (Paragraph 11.2);<sup>3</sup> and

In all cases, the SMP operator must not advertise or announce publicly in any way its proposed price for a Price Regulated Service until it has received URCA's approval for that price (Paragraph 12).

The Consumer Protection Regulations supplement the Retail Pricing Rules by ensuring that consumers are well-informed as set out below:

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<sup>3</sup> This should be read in conjunction with Part I of the Rules

A Service Provider shall provide Consumers with information on Services and Products that is accurate, true, up-to-date, in simple, clear language and adequate to ensure that the Consumer is aware of all material aspects of the Service and any matters which might reasonably be expected to impact upon the Consumer's decision to enter into a contract for the Service, or the Consumer's enjoyment of the Service. (Section 2.1.2)

A Service Provider shall ensure that the current service arrangements, including rates and terms and conditions for all Services and Products offered to the public are readily available and prominently displayed on any website through which the Service Provider does business with or provides information to the public, and at all retail outlets where the Service Provider's Services and Products are sold. (Section 2.1.3)

A Service Provider shall give a Customer not less than one (1) month notice of any proposed modification, amendment or variation to a contract (which term includes a change in the price of any Service or Product, whether approved by URCA or not) which is likely to be of material detriment to the Customer. The giving of such notice shall be grounds for termination of the contract by the Customer from the effective date of the notice, without penalty or charge other than in respect of any Services already provided to the Customer under the contract (but not in respect of Products purchased by the Customer in connection with the Services). The Service Provider shall, at the same time as giving the notice, inform the Customer of the ability to terminate the contract without penalty if the proposed modification is not acceptable to the Customer by the Customer giving written or other notice to that effect to the Service Provider at any time during the notice period. (Section 2.5.7)

Section 8.3.1(a) provides that a service provider must comply in a timely manner with all directions given by URCA in furtherance of these Regulations.

In addition, Section 10.8.4 of the Regulations provides that:

Continuing or repeated breaches of these Regulations by a Service Provider shall be reviewed by URCA to determine if such breaches constitute a breach of the



Service Provider's applicable Licence Conditions warranting regulatory action to be taken by URCA against the Service Provider.

### 3. URCA's Assessment of CBL's Submission

In this section, URCA summarises and responds to CBL's submission to the Preliminary Determination and Draft Order. For ease of reference, CBL's comments are presented in the same order as they appear in the submission.

#### 3.1 The Channel Changes

[REDACTED]

[REDACTED] CBL also explained that the replacement channels are free-to-air channels broadcasted from the United States then received by CBL's mast on Bimini and distributed over CBL's television network in The Bahamas. CBL clarified that free-to-air channels do not require legal or licensing arrangements as set out in section 83 of the Copyright (Amendment) Act of 2015.

CBL referred to the following quote from URCA that "CBL's public statements on the changes which cite changes in licensing agreements as the cause, do not reflect information that is true and accurate." [REDACTED]

[REDACTED]

[REDACTED] For this reason, CBL claimed URCA misunderstood the scope of "changes in licensing agreements" when URCA described CBL's public statements as not true or accurate.

CBL referred to URCA's statement that URCA had reason to believe the new free-to-air channels would still require CBL to establish arrangements for the channels with content distributors. In CBL's view, URCA had failed to understand the nature of free-to-air broadcasts which are available to anyone that has the appropriate reception equipment therefore no arrangements are necessary. CBL invited URCA to explain why it believes otherwise.

#### URCA's Response/Final Determination

Prior to CBL's response to the Preliminary Determination, CBL had not provided a reasoned explanation for the removal of channels as a part of any written correspondence between CBL and URCA on the subject matter. Any verbal discussions held between a licensee and URCA's

executives are considered outside the scope of the formal investigation process under the Comms Act. Same is true in respect of informal discussions and off the record comments. In exercising its investigative powers under the Comms Act, URCA can only rely on written representations made as part of a formal process. This ensures that all factors considered are documented for future reference or for purposes of appeal.

In regard to arrangements with content distributors for free-to-air channels, URCA accepts that CBL need not establish formal licensing arrangements to broadcast those channels.

URCA disagrees with CBL's explanation that when it attributed the channel removal to "changes in licensing agreements", this meant there was a lack of any licensing agreements. CBL's letter dated 13 July 2019 and John Gomez's quote in *The Nassau Guardian* article both clearly stated that the removal was due to changes in "licensing agreements with several networks". CBL reiterated this claim on its website – see Figure 1 below. It is unclear to URCA how agreements which never existed in the first place can change. URCA finds CBL's explanation to be unconvincing. URCA is still of the view that CBL's public statements on the subject matter were not true or accurate. Therefore, URCA maintains its view that CBL breached Section 2.1.2 of the Consumer Protection Regulations.

### **3.2 Retail Pricing Rules**

CBL referred to URCA's *Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009*" (ECS 14/2014) which determined that CBL's access and content pay TV packages, i.e., PRIME, PRIME Select, PRIME Plus, and PRIME Extra, were subject to ex-ante price cap regulation. CBL acknowledged that the packages affected by the channel removal were PRIME, PRIME Extra, and Prime Sports but CBL did not consider PRIME Sports to be included in the scope of CBL's SMP and therefore does not require any consent for changes under the Retail Pricing Rules.

CBL quoted Paragraph 11.2 of the Rules which requires an SMP operator to obtain URCA's approval before "introducing any changes to non-price terms and conditions for Price Regulated Services that could be expected to affect either the effective price paid by consumers or the costs incurred by the SMP operator". CBL provided a table detailing the retail prices for the PRIME and PRIME Extra packages and the costs incurred by CBL for both packages which showed that there were no changes to the prices or costs following the channel changes. CBL

trusted that the table was sufficient evidence and reiterated that it did not contravene Paragraphs 11.2 and 12 of the Retail Pricing Rules.

#### URCA's Response/Final Determination

URCA disagrees with CBL's conclusion that PRIME Sports is outside the scope of CBL's SMP but URCA agrees that PRIME Sports is not subject to the Retail Pricing Rules. URCA refers CBL to Sections 6.1.1 and 7.4.4 of the *Preliminary Determination on the Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009* (ECS 10/2014)<sup>4</sup> for URCA's detailed rationale on which products are included in the defined product market which was later confirmed in the Final Determination (ECS 24/2014). URCA found CBL to have SMP in the provisioning of all pay TV services, including, amongst others, CBL's access and content pay TV packages, its 'add on' TV channel packages that include PRIME Sports, PRIME Movies, etc., and its 'on demand' services (i.e., pay-per-view and 500 REVTV on demand). For the avoidance of doubt, ECS 14/2014 determined that the pay TV packages marketed as PRIME, PRIME Select, PRIME Plus, and PRIME Extra are subject to ex-ante price cap regulation, however, the remaining SMP obligations apply to all of CBL's pay TV services. These include obligations imposed by URCA on accounting separation and cost accounting and the standard SMP obligations set out in Conditions 34, 35, and 36 of the IOL and section 40(4) of the Comms Act. Furthermore, all of CBL's products and services, including those not within the scope of CBL's SMP, remain subject to the Consumer Protection Regulations.

With that stated, URCA took into account CBL's comments that the effective retail price paid by PRIME and PRIME Extra subscribers and the costs incurred by CBL did not change as a result of the channel replacements and accepts CBL's explanation. Therefore, URCA determines that CBL was not required to obtain URCA's written approval to change its PRIME and PRIME Extra TV channel line-up.

### **3.3 Individual Operating Licence**

CBL did not accept URCA's allegation that CBL breached Condition 35 of its IOL. CBL repeated that there were no changes in the monthly retail price for the packages or in the price per

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<sup>4</sup> <https://www.urcabahamas.bs/wp-content/uploads/2017/02/ECS-10-2014-Preliminary-Determination-Assessment-of-Significant-Market-Power-in-the-Electronic-Communications-Sector-of-The-Bahamas-1.pdf>

channel. CBL then claimed that the terms and conditions for CBL's television service and for the lease of CATV equipment are specific legal documents with the heading 'Terms and Conditions'. CBL continued that the terms and conditions are attached to the customer's contract when the customer takes the service. The customer signs the contract and agrees that they have read and understood those terms and conditions. CBL avowed that no changes were made to the documents labelled 'Terms and Conditions'. CBL invited URCA to specify which charges or terms and conditions changed as a result of the channel replacements.

CBL further pointed out that Condition 35 sets out CBL's responsibilities as an SMP operator and therefore the PRIME Sports package is outside the scope of CBL's SMP power.

CBL also referred to the disclaimer on its website that states: "Channel selection and packages subject to change". CBL argued that this disclaimer made it clear to customers that the list of channels in each package is not guaranteed.

#### URCA's Response/Final Determination

In respect to CBL's rationale that because the legal documents labelled 'Terms and Conditions' were not amended then it considers that the terms and conditions for the service did not change, URCA disagrees. In URCA's view, any supplement to the contract, inclusive of any channel listing whether in a printed or digital format, is a term and condition of the service. Apart from the retail price, channel selection is one of the most important features when a prospective or existing subscriber is deciding whether to subscribe to or keep a television service. CBL never advised customers that its pay TV channel line-ups are outside the agreed terms or conditions.

That said, URCA rejects CBL's claim that its channel line-ups are not part of the non-price terms and conditions for pay TV packages. From URCA's standpoint, CBL's practice of not referencing the channel line-ups in its 'Terms and Conditions' documents is to avoid the need for frequent review and amendments to customer contracts. Hence, CBL is now wrong to claim that the channel line-up is not a term or condition of the service. In The Bahamas, the download speeds for CBL's broadband products, in-plan allotments for fixed voice telephony plans offered by CBL and BTC, and in-plan allotments for mobile services (on both cellular networks) are understood to be part of the non-price terms and conditions. Also, URCA is aware that in

Canada and elsewhere the channel line-up is an integral part of the 'Terms and Conditions' for pay TV services. Please see Canada's Television Service Provider Code<sup>5</sup> which specifies that the channel line-up is a part of the written agreement between the provider and the consumer. URCA sees no reason why the situation should be any different in The Bahamas.

In total, while for administrative reasons the channel listing may not be included in the written terms and conditions, it goes to the very essence of the contract by defining the product sold to the subscriber. Consequently, it cannot be dismissed as not forming a part of the terms and conditions under the guise of the parole evidence rule to displace CBL's obligation to give requisite notice. That said, URCA acknowledges CBL's disclaimer that channels are "subject to change" does give CBL the ability to do the same however it does not discharge CBL's duty to give notice.

URCA addressed CBL's comments regarding PRIME Sports in Section 3.2 of this document. PRIME Sports is subject to the Consumer Protection Regulations and the IOL but not the Retail Pricing Rules. Therefore, any breach of the Consumer Protection Regulations and the IOL committed by CBL in respect to PRIME Sports is also applicable to this Final Determination.

In conclusion, URCA maintains that CBL breached Condition 35 of its IOL for not publishing amendments to the terms and conditions of the affected packages.

### **3.4 Consumer Protection Regulations**

In relation to URCA's allegation that CBL breached Sections 2.1.2 and 2.1.3 of the Consumer Protection Regulations for not updating the channel listing on its website, CBL stated that URCA did not take into account Section 2.1.4 which states:

Where a Service Provider is required by these Regulations to inform a Consumer of matter under these Regulations, a Service Provider shall satisfy this obligation by means of any or all of the following:

- (a) providing the information to the Consumer verbally;

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<sup>5</sup> <https://crtc.gc.ca/eng/television/services/codesimpl.htm>

- (b) providing the information to the Consumer in writing;
- (c) prominently displaying the information at all retail outlets where the Service Provider’s Services are sold and/or on websites where the Consumer enters into a contract with the Service Provider;
- (d) providing the information to the Consumer electronically; and
- (e) placing the information in any mass media. (emphasis added)**

CBL then referred to the announcement on its Facebook page and the article in *The Nassau Guardian* which contained direct quotations from two senior CBL executives. CBL also provided a link to a post on its website about the channel changes. A screenshot of the post is provided below.

**Figure 1. Screenshot from CBL Programming Updates Page<sup>6</sup>**

## Programming Updates

Cable Bahamas’ contracts with programmers to carry their services and stations on REVTV expire occasionally. While we are usually able to renegotiate these agreements with no interruption in service for our REVTV customers, in rare instances, programmers may insist that we cease carriage of their content. In addition, it may become necessary to make adjustments to our channel line-ups and television packages.

For more information on upcoming expirations or other programming changes see below:

### June 2019

Effective June 14, REV television subscribers are advised of the following changes to the channel lineup:

Channel Number	Package Name	Channel Removal	Channel Replacement
465	Prime	USA	Ion TV
314	Prime Plus	Freeform	Escape TV
359	Prime Plus	TV Land	MeTV
305	Prime Extra	Sprout	PBS Kids
311	Prime Extra	Nicktoons	Qubo
487	Prime Extra	Hallmark	Ion Life
586	Prime Extra	Independent Film Channel	MOVIES!
720	Prime Sports	Tennis Channel	Quest TV

For any questions or concerns, customers can contact REV support by calling toll free at 1-242-300-2200 or via WhatsApp at 738-9060.

Source: <https://www.cablebahamas.com/revtv/programming-updates/>

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<sup>6</sup> URCA notes the discrepancies between Table 1 which is based on information provided to URCA by CBL and Figure 1 which was taken from CBL’s website and will address separately.

According to CBL, electronic media and print media are covered by the term “mass media” as stated in Section 2.1.4 of the Consumer Protection Regulations. As such, CBL believes that it satisfied its obligations under Sections 2.1.2 and 2.1.3 with the placements (i.e., Facebook announcement, newspaper article, and website post) therefore no breach took place.

In regard to Section 2.5.7 of the Consumer Protection Regulations, CBL acknowledged that it should have given notice to its customers of the channel changes, if only as a matter of courtesy and good public relations. In terms of the legal compliance with Section 2.5.7, CBL pointed out the following:

- The channels under the various PRIME packages are not set out in the customer’s contract or in the terms and conditions attached to the contract.
- The channels in each package are listed on CBL’s website as part of the marketing material on the website but the website includes the caveat that the channels are subject to change.
- CBL stated that the channel changes have not resulted in a material detriment to the customer overall. CBL asserted that the new channels are equal to, or in some cases, better than the replaced channels. CBL provided a table of what it considered to be evidence for this assertion. The table presented the number of viewing hours and channel views/visits in May 2019 for the eight channels that were removed and compared the same data for the month of July 2019 regarding the eight replacement channels. CBL ascertained that because the number of viewing hours and visits were greater for the new channels [REDACTED] in comparison to the previously available channels, it appeared that customers were enjoying the new channels more and did not suffer any “material detriment”.

For the reasons cited above, CBL believes that it did not contravene Section 2.5.7.

#### URCA’s Response/Final Determination

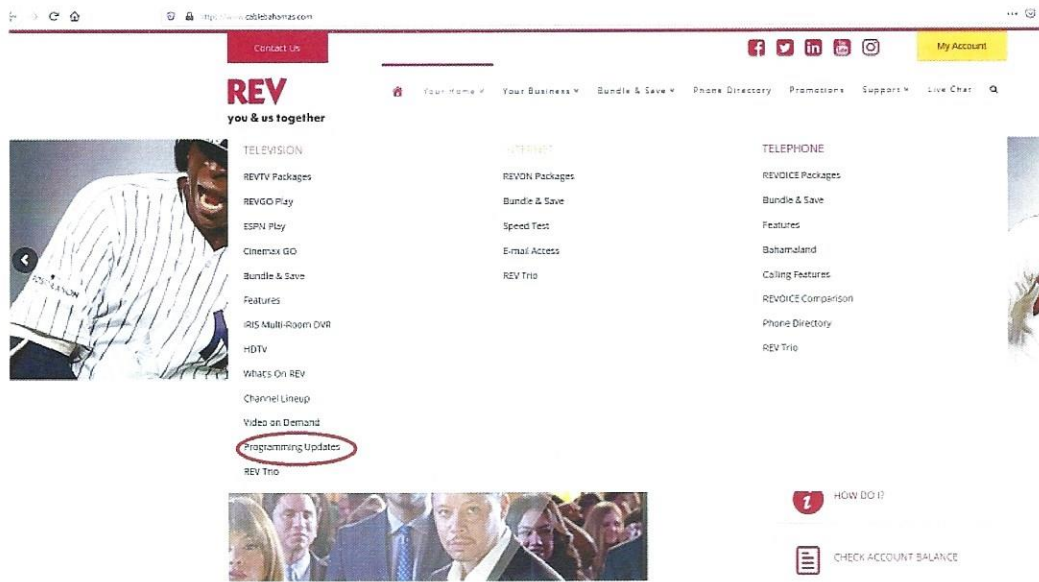
URCA disagrees with CBL’s rationale that the placement of information in mass media satisfied its obligations under Sections 2.1.2 and 2.1.3 of the Consumer Protection Regulations despite not updating the channel listing on its website. Section 2.1.4 lists the means by which a service provider shall inform consumers of matters under the regulations, however, if the information is inaccurate and outdated on any of CBL’s platforms then the overall obligation has not been satisfied. Section 2.1.2 specifies that the information must be “accurate, true, up-to-date” and Section 2.1.3 specifies “**current** service arrangements”. CBL’s website is the principal medium through which CBL’s pay TV offerings are marketed to the public. Customers also rely on this



medium to pay their monthly bills and make inquiries about their service offerings, etc. As such, consumers view CBL's website as the principal source of the most accurate and up-to-date information on the provider's products and services, however, the outdated channel listing remained on CBL's website for four months after the changes were made. Furthermore, URCA is not assured that the majority of affected customers are the same ones who viewed the Facebook announcement or read the article instead of checking the website for an accurate and up-to-date channel listing. As such, CBL should always ensure that any information provided through **any or all** of the means listed in Section 2.1.4 is consistent to avoid conflicting information and also in line with the specifications in Section 2.1.2. Additionally, Section 2.1.3 speaks specifically to CBL ensuring that current service arrangements are readily available and prominently displayed on its website therefore providing information through any other medium listed in Section 2.1.4 does not relieve CBL of its duty to update its website as per 2.1.3.

In regard to the placements, the article in *The Nassau Guardian* does not qualify as placing the information in mass media. In URCA's view, the article was a reporter's coverage of the channel changes and was not placed in the newspaper by CBL. In reference to CBL's post on the webpage titled 'Programming Updates', URCA does not consider this to be prominently displayed on the website. As shown in Figure 2 below, the link to the 'Programming Updates' webpage was the second to the last link for the television category in the dropdown menu. There was no other reference on the homepage such as a banner or summary description that would lead website visitors to the 'Programming Updates' page. In URCA's view, the page is not easily discoverable to most website visitors without prior knowledge of its existence. Instead, most visitors would be inclined to go to the REVTV Packages Page to find information regarding the channel line-up.

Figure 2. Cable Bahamas Homepage



URCA addressed the caveat that channels are subject to change in Section 3.3.

URCA disagrees with CBL’s argument about there being no material detriment to customers. Customers were at a disadvantage once the channels were removed and should have had an opportunity to decide if they wanted to unsubscribe from a service or package. To date, URCA has received 11 official complaints on the channel changes. There is further evidence that customers were harmed based on the number of negative comments on CBL’s Facebook page expressing their displeasure with the channel changes. A small sample of the comments under CBL’s Facebook announcement<sup>7</sup> are provided below:

*“Honestly, this is poor customer service. You send multiple emails a month regarding billing and it didn’t cross your mind to send out a notification of channel changes? I upgraded my cable package specifically for Hallmark Channel*

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[https://www.facebook.com/GetRevdUp/posts/3151816041496036?\\_xts\\_\\_\[0\]=68.ARDJEGZrC6IG54kQ7PfZ6OzK4hfBQWojPMUBTo9YheuQwrzyj-EV78GkgpYw4QxC5GBcIGB2TbUgztSx7itAp-L5cRnwo4dNqztt9471W4QolziKfVe6EWwTw4VlciVSHA7Cd5QgHuB8yaHY92znj4jYwLlwled1SaN1H1pOHP1xtNeu9jTIs-tQIUM5vXXG6U9W\\_OKhwBjRZP8SrQ-e1KddzLcxsVOvCAeEReyvHnDu4PtY6rD9egcTRmt9-HyVuJhZqweQenAXmw6Z7LzeptcrqE0ONGqZDHBQBNY8OJGr7iraWVT031npu9kpiH9YH2Zl8V6XzD8RMk7FsTqidviNasg&\\_tn\\_=-R](https://www.facebook.com/GetRevdUp/posts/3151816041496036?_xts__[0]=68.ARDJEGZrC6IG54kQ7PfZ6OzK4hfBQWojPMUBTo9YheuQwrzyj-EV78GkgpYw4QxC5GBcIGB2TbUgztSx7itAp-L5cRnwo4dNqztt9471W4QolziKfVe6EWwTw4VlciVSHA7Cd5QgHuB8yaHY92znj4jYwLlwled1SaN1H1pOHP1xtNeu9jTIs-tQIUM5vXXG6U9W_OKhwBjRZP8SrQ-e1KddzLcxsVOvCAeEReyvHnDu4PtY6rD9egcTRmt9-HyVuJhZqweQenAXmw6Z7LzeptcrqE0ONGqZDHBQBNY8OJGr7iraWVT031npu9kpiH9YH2Zl8V6XzD8RMk7FsTqidviNasg&_tn_=-R)

*and imagine my annoyance when I come home from a long day of work to find that the one channel I watch regularly is gone without notice. I pay my bill in full and on time EVERY month and to have this level of service is appalling. I am disgusted."*

*"Since this is no choice in the matter for customers, will the price decrease for subscribers!? Esp [especially since] it's June 14th and communication sent 2hrs ago."*

*"Rev cablebahamas you send an email out at 4:19 pm after the fact that all the changes have taken place. Customers should've been advised prior so that we could've decided whether we wanted to keep the package that we were paying extra for to get Hallmark. Rest assured I'll be canceling my cable and might even consider trying BTC for internet. Your customer services. SUCKS!"*

*"[Y'all] had time to find channels to replace them with, but no time to inform your paying customers beforehand."*

*"So my price dropping? Cuz I signed a contract for the ones that y'all replaced..."*

The customer dissatisfaction was also covered in two news stories: "Some customers lament changes to programming"<sup>8</sup> by *Eyewitness News* and "URCA to look into complaints as channels vanish"<sup>9</sup> by *The Tribune*. The above affirms URCA's thinking that subscribers considered the channel changes to PRIME packages materially detrimental to their welfare. In reference to CBL's data that more people are watching the new channels, URCA cannot verify whether the customers watching the replacement channels are the same customers who watched the removed channels. In any case, the supporting information cited above suggests to URCA that CBL's data might not accurately capture the views of customers.

For the reasons above, URCA has determined that CBL breached Sections 2.1.2, 2.1.3, and 2.5.7 of the Consumer Protection Regulations.

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<sup>8</sup> <https://ewnews.com/some-rev-customers-lament-changes-to-programming>

<sup>9</sup> <http://www.tribune242.com/news/2019/jun/18/urca-look-complaints-channels-vanish/>

### **3.5 Behavioural and Structural Remedies**

CBL maintained that it complied with the requirements and procedures set out in the Retail Pricing Rules, its IOL, and the Consumer Protection Regulations hence there is no justification for URCA's proposed requirement for CBL to abide by the approval and notification procedures in the Rules. CBL agreed that it is desirable for its website to be accurate, true, and up-to-date for effective marketing and public relations, however, CBL argued that Section 2.1.2 of the Consumer Protection Regulations is qualified by Section 2.1.4. As such, CBL repeated that no legal breach occurred and that URCA cannot enforce Section 2.1.2 without referring to Section 2.1.4.

#### URCA's Response/Final Determination

CBL proved that it was not required to apply to URCA to change the non-price terms and conditions of the service under the Retail Pricing Rules as URCA confirmed in Section 3.2 above. In spite of this, CBL is still obligated under its IOL and the Consumer Protection Regulations to notify customers of changes in advance and to keep its website up-to-date. As explained in Sections 3.3 and 3.4, URCA maintains that CBL breached Condition 35 of its IOL and Sections 2.1.2 and 2.1.3 of the Consumer Protection Regulations.

### **3.6 Proposed Fine**

#### **3.6.1 Basic Amount of Fine**

In regard to URCA's proposal that the starting point for the fine should be 10% of CBL's revenues from its PRIME, PRIME Extra, and PRIME Sports packages for the months of June, July, and August 2019, CBL considered this to be unjustified for the following reasons:

- CBL insisted that it did not breach any of its obligations.
- CBL repeated that the PRIME Sports channel is outside the scope of CBL's SMP conditions and should be excluded from all calculations.
- CBL argued that the alleged breaches did not apply to all channels in the PRIME and PRIME Extra packages therefore URCA should not include revenues from channels that were not affected by the changes. CBL explained that only one channel from the PRIME package was replaced (this represented 1% of the total channels in the package) and four channels in the PRIME Extra package were replaced (less than 2%). CBL continued

that the remaining three channels were in the PRIME Plus or the PRIME Sports packages which are not subject to CBL's SMP obligations.

- In CBL's view, URCA did not justify why the basic amount should be based on the revenues from June, July, and August. CBL did not consider the month of June to fall within the parameters of the time period in which the alleged breaches took place. CBL explained that the channels were replaced in mid-June and if there was a breach under Condition 35.2 of the IOL, ten working days are allowed before publication is required which meant the deadline to publish was 1 July 2019.

CBL expressed that due to commercial confidentiality, it will provide any information required by URCA in a separate correspondence once the basis of the fine, if any, has been decided.

#### URCA's Response/Final Determination

Please refer to Sections 3.2, 3.3, and 3.4 which addressed CBL's comments on whether it breached its SMP obligations and whether the PRIME Sports package is within CBL's scope of SMP obligations. URCA took into account CBL's argument that the fine should not include revenues from unaffected channels. Although URCA disagrees in principle as customers are charged in full for the entire package and not on a per channel or a la carte basis, URCA will readjust the starting point for the fine to 1% instead of 10% to make the fine more proportionate with the number of channels removed.

URCA denies CBL's view that the month of June should not be included in the basic amount because the changes took effect on 14 June 2019. While the IOL states that any amendments shall be published within ten working days, the Consumer Protection Regulations mandates that consumers should have been notified at least one month in advance of the changes, however, CBL failed or refused to do so. As such, URCA asserts that CBL's conduct in breach of its obligations began in June 2019. In respect to CBL failing to update its website, URCA maintains that this action took place beginning in June and continued until the month of October. However, URCA has reconsidered and decided to focus on the compensation for customers which is detailed in Section 3.7 below and CBL's failure to provide customers with the requisite prior notice of the changes. As such, URCA will apply the basic fine to the month of June 2019 only. Accordingly, URCA determines that the basic fine should be 1% of the total revenues derived from the PRIME, PRIME Extra, and PRIME Sports packages for the month of June 2019. This is because the breaches identified affected subscribers to these packages.

### **3.6.2 Gravity of Breach**

CBL considered URCA's proposal to increase the fine for the gravity of breach, due to customers not receiving any notice and the number of impacted subscribers, to be unjustified. CBL insisted that it satisfied its legal requirements to give notice, however, CBL accepted that it should have given notice for customer relations reasons. CBL argued that very few of its customers were affected by the channel changes with less than 5% of viewing hours and less than 1% of views spent on the removed channels when compared to all of CBL's programming. In CBL's view, because the majority of its customers did not watch the affected channels, there was no justification to increase the fine because of the number of impacted subscribers.

#### URCA's Response/Final Determination

CBL's comments regarding the fulfilment of its obligations were addressed in previous sections. URCA rejects CBL's argument that the majority of customers were not affected by the changes because they did not watch the removed channels. Customers were impacted once they were subscribed to any of the channels that were replaced. This is confirmed by data provided by CBL in its 31 July 2019 response to URCA's information request. URCA therefore maintains that an upward adjustment of 10% to the basic amount is necessary for the gravity of breach.

### **3.6.3 Duration of Breach**

CBL again stated that no breach occurred. In any case, CBL considered the proposed adjustment for the duration of breach to be double counting as the duration was already reflected in the three months proposed for the basic fine.

#### URCA's Response

URCA addressed CBL's comments on whether CBL committed a breach in previous sections. As stated in Section 3.6.1, URCA has determined that the fine will be applied to the month of June 2019 only, in addition to the compensation for customers outlined in Section 3.7.

### **3.6.4 Aggravating Circumstances**

CBL rejected URCA's allegations that CBL was not truthful and accurate in its public statements concerning the channel changes, had time to comply with its obligations, and was not transparent in its communications with URCA. CBL reiterated that its reference of "changes in licensing arrangements" did not refer to changes in terms of any licensing agreements but to

the lack of such arrangements. CBL repeated that it complied with its legal obligations and that URCA misunderstood the technical arrangements and legal background for the new channels which are free-to-air and is expecting information that does not exist. For these reasons, CBL did not accept that there is any justification to increase the fine for aggravating circumstances.

#### URCA's Response/Final Determination

URCA responded to similar CBL comments in the previous sections. URCA remains of the view that an upward adjustment of 5% for aggravating circumstances is necessary.

#### **3.6.5 Mitigating Circumstances**

URCA invited CBL to submit any mitigating circumstances for its consideration. CBL would like URCA to note the following:

- It provided customers with free access to its premium channels for the period 16 – 18 August 2019.
- It permits any customers dissatisfied with the new channels to end their subscriptions without having to give the notice period required under the terms and conditions.
- CBL held a conference call on 18<sup>th</sup> June and a meeting on the 24<sup>th</sup> June with URCA to explain the background and reasons for the channel changes.

CBL continued that if URCA does impose a fine, the above circumstances should be taken in account.

#### URCA's Response/Final Determination

URCA notes CBL's provision of free access to its premium channels, however, URCA does not consider it to be sufficient to remedy the breach. URCA is aware that CBL occasionally provides free access to premium channels in order to build customer goodwill and to promote premium packages. The free access took place in August and it was not advertised as a compensation for the channels that were removed without notice therefore URCA does not believe that customers associated the free access with the channel removal. On the other hand, URCA agrees with the practice of permitting customers dissatisfied with the new channels to end their subscriptions without the required notice although it was not specified how long this will continue. As stated previously, URCA considers verbal discussions between URCA and CBL

executives to be out of scope for this investigation. For these reasons, URCA believes that CBL did not mitigate the breach and will not make a downward adjustment.

### **3.6.6 Policy Objectives**

CBL restated that it met its legal obligations as required by the Rules, its IOL, and Consumer Protection Regulations therefore no adjustment for URCA's policy objectives can be justified.

CBL estimated that URCA's proposed fine would be in excess of \$1 million and considered this to be excessive and disproportionate to fines imposed by URCA for more egregious actions by other operators in the sector. CBL therefore asked URCA to reconsider its proposed fine in light of the comments and clarification provided by CBL.

#### URCA's Response/Final Determination

URCA responded to CBL's claims that it met its legal obligations in the previous sections of this Final Determination. As a part of its policy objectives under the Comms Act, URCA has a duty to further the interests of consumers therefore URCA must impose measures to deter a licensee from breaching its obligations. URCA affirms that an upward adjustment of 10% to the basic amount is necessary. In reference to the total proposed fine being excessive, URCA did lower the starting point of the fine to 1% in Section 3.6.1 and (in addition to upward adjustments) determined that it should only be applied to the month of June 2019. URCA emphasizes that CBL did not provide the requested financial data therefore URCA is unable to calculate or verify the actual dollar amount at this time.

### **3.7 Compensation for Affected Customers**

CBL restated that the replaced channels played only a small part in the time customers spent viewing CBL's television services. Nevertheless, CBL repeated that it provided customers with free access to its premium channels during 16 – 18 August 2019 and allows customers who are dissatisfied with the changes to cancel their subscriptions without giving notice. CBL considered this to be compensation that is proportionate to the problems caused by the channel replacements.

#### URCA's Response/Final Determination

For the reasons given in Section 3.6.5, URCA disagrees with CBL's arguments that the free access to its premium channels was a proportionate compensation to the channels. URCA



considers a monetary bill credit to be a suitable compensation. URCA has determined that CBL shall provide a monetary bill credit to customers who were subscribed to the affected packages at the time the channels were replaced. URCA took into account that REVTV PRIME and PRIME Sports each had one channel that was replaced while PRIME Extra had six channels that were replaced. The impacted number of channels represented approximately 1% of PRIME, 7% of PRIME Sports and 32% of PRIME Extra. URCA recognises the number of impacted channels for PRIME and PRIME Sports were relatively small when compared to the total number of channels in the packages. In contrast, PRIME Extra experienced a larger proportion of channels that were impacted. In spite of this, URCA is cognisant of the fact that subscribers pay for the entire package and not on a per channel basis.<sup>10</sup> As such, URCA has the view that the compensation should strike a reasonable balance between the number of channels affected and the price of the package. With that stated, URCA has determined the compensation amounts detailed below:

- Subscribers of REVTV PRIME shall receive a bill credit in the amount of \$4.00 per subscriber.
- PRIME Extra had the largest number of channels impacted by the changes with six channels that were replaced out of the 19 total channels in the package. Therefore, subscribers of REVTV PRIME Extra shall receive a bill credit in the amount of \$6.00 per subscriber. This will be in addition to credits applied for PRIME and/or PRIME Sports.
- Subscribers of REVTV PRIME Sports shall receive a bill credit in the amount of \$2.00 per subscriber. This will be in addition to credits applied for PRIME and/or PRIME Extra.

CBL shall pay the compensation to customers no later than sixty (60) calendar days from the issuance of this Final Determination. Upon payment of the compensation, CBL shall submit a report of the compensation payment to URCA setting out the amount of compensation (\$ amount/number of subscribers) and it should be categorised by subscription package. The report must be submitted to URCA no later than thirty (30) calendar days following the compensation payment. URCA reserves the right to request an independent verification of the compensation payment at CBL's expense.

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<sup>10</sup> Based on the information on CBL's website, the affected packages are priced as follows: \$38.00 for PRIME, \$10.00 for PRIME Extra, and \$9.95 for Prime Sports. The prices exclude VAT.

## 4. Final Determination

This Final Determination is issued by the Utilities Regulation and Competition Authority ('URCA') pursuant to section 100 of the Communications Act, 2009 (Comms Act). This Final Determination is addressed to Cable Bahamas Limited ('CBL').

**WHEREAS** on 14 October 2009, URCA issued Cable Bahamas Limited ('the Licensee') an Individual Operating Licence ('the Licence') to provide electronic communications services within, into, from and through The Bahamas, subject to the conditions of the Licence, regulatory and other measures and the provisions of the Comms Act.

**WHEREAS** Condition 35 of the Licence provides that:

35.1 The SMP Licensee shall publish charges, terms and conditions, including bundled charges, terms and conditions (whether or not those bundles include charges, terms and conditions for Carriage Services supplied in markets to which this Condition does not apply) for all Carriage Services related to the markets in which it is determined or presumed to have SMP.

35.2 The SMP Licensee shall publish any amendments to the charges, terms and conditions published under Condition 35.1, including charges, terms and conditions for any new services, within ten working days of the time that the amendment comes into effect.

35.3 Publication referred to in Condition 35.1 shall be effected by placing a copy of the information on any relevant website operated or controlled by the SMP Licensee.

...

35.5 The SMP Licensee shall provide Carriage Services at the charges, terms and conditions published under this Condition, and shall not depart from those charges, terms and conditions either directly or indirectly.

**WHEREAS** the Consumer Protection Regulations obliges licensees to ensure that consumers are well-informed as set out below:

A Service Provider shall provide Consumers with information on Services and Products that is accurate, true, up-to-date, in simple, clear language and adequate to ensure that the Consumer is aware of all material aspects of the Service and any matters which might reasonably be expected to impact upon the Consumer's decision to enter into a contract for the Service, or the Consumer's enjoyment of the Service. (Section 2.1.2)

A Service Provider shall ensure that the current service arrangements, including rates and terms and conditions for all Services and Products offered to the public are readily available and prominently displayed on any website through which the Service Provider does business with or provides information to the public, and at all retail outlets where the Service Provider's Services and Products are sold. (Section 2.1.3)

A Service Provider shall give a Customer not less than one (1) month notice of any proposed modification, amendment or variation to a contract (which term includes a change in the price of any Service or Product, whether approved by URCA or not) which is likely to be of material detriment to the Customer. The giving of such notice shall be grounds for termination of the contract by the Customer from the effective date of the notice, without penalty or charge other than in respect of any Services already provided to the Customer under the contract (but not in respect of Products purchased by the Customer in connection with the Services). The Service Provider shall, at the same time as giving the notice, inform the Customer of the ability to terminate the contract without penalty if the proposed modification is not acceptable to the Customer by the Customer giving written or other notice to that effect to the Service Provider at any time during the notice period. (Section 2.5.7)

**WHEREAS** under section 9(1) of the Comms Act, URCA may investigate one or more of the following:

- (a) any contravention;
- (b) any alleged contravention; and
- (c) any circumstances where it has grounds to suspect a contravention,

of any provision of this Act and any regulatory or other measure issued under this Act, including any licence issued under this Act.

**WHEREAS** on 13 June 2019, CBL wrote to URCA that it was removing eight channels, i.e., USA, Freeform, TV Land, Sprout, Nicktoons, Hallmark, Independent Film Channel, and the Tennis Channel, from its REV TV line-up effective 14 June 2019 and replacing them with eight channel replacements, i.e., ION TV, Escape TV, Heroes and Icons, PBS Kids, Qubo, ION life, MOVIES!, and Quest TV, respectively. On the same day the changes took effect, CBL announced the changes to the public via a Facebook post and an article in *The Nassau Guardian*.

**WHEREAS** URCA, during its investigation, observed that CBL's website had not been updated to reflect the changes that took effect on 14 June 2019.

**NOW** URCA is satisfied that the Licensee is in breach of Condition 35 of its Licence and Sections 2.1.2, 2.1.3, and 2.5.7 of the Consumer Protection Regulations for the following reasons:

- (i) CBL failed or refused to provide consumers with a minimum notice of one month before implementing the changes;
- (ii) CBL provided consumers with information that was not accurate or true;
- (iii) CBL failed or refused to publish all non-price terms and conditions for a service on its website; and
- (iv) CBL failed or refused to display on its website accurate, true, and up-to-date information on all material aspects for subscribing to a service.

URCA has determined that the Licensee shall:

- (i) Notify consumers of all relevant terms and conditions for all price changes and changes to non-price terms and conditions for all services and products within the timeframes specified in the Consumer Protection Regulations and/or the Licence;
- (ii) Ensure that its website and social media platforms display information that is accurate, true, and up-to-date;

- (iii) Pay a fine under section 109 of the Comms Act equal to 1.25% of the total revenues from the PRIME, PRIME Extra, and PRIME Sports packages for the month of June 2019 no later than thirty (30) calendar days from the issuance of this Final Determination. Along with the payment of the fine, CBL must submit financial data for the month of June 2019 in order for URCA to verify the amount of the fine; and
- (iv) Compensate customers directly affected by the non-price changes via a monetary bill credit in the amount and timeframe specified by URCA below. The compensation amounts should apply to the accounts of all impacted subscribers no later than sixty (60) calendar days from the issuance of this Final Determination:
  - a. Subscribers of REVTV PRIME shall receive a bill credit in the amount of \$4.00 per subscriber.
  - b. Subscribers of REVTV PRIME Extra shall receive a bill credit in the amount of \$6.00 per subscriber. This will be in addition to credits applied for PRIME and/or PRIME Sports.
  - c. Subscribers of REVTV PRIME Sports shall receive a bill credit in the amount of \$2.00 per subscriber. This will be in addition to credits applied for PRIME and/or PRIME Extra.
- (v) Upon payment of the compensation, CBL shall submit a report of the compensation payment to URCA setting out the amount of compensation (\$ amount/number of subscribers) categorised by subscription package. The report must be submitted to URCA no later than thirty (30) calendar days following the compensation payment. URCA reserves the right to request an independent verification of the compensation payment at CBL's expense.

## 5. Order

This Order is enclosed by the Utilities Regulation and Competition Authority ('URCA') pursuant to section 100 of the Communications Act, 2009 (Comms Act) that URCA issues in conjunction with the Final Determination and Order pursuant to section 95 of the Comms Act.

**WHEREAS** by Final Determination made on 21 November 2019, URCA has determined that Cable Bahamas Limited ("the Licensee") has breached Condition 35 of its Individual Operating Licence and Sections 2.1.2, 2.1.3, and 2.5.7 of the Consumer Protection Regulations for the following reasons:

- (i) CBL failed or refused to provide consumers with a minimum notice of one month before implementing the changes;
- (ii) CBL provided consumers with information that was not accurate or true;
- (iii) CBL failed or refused to publish all non-price terms and conditions for a service on its website; and
- (iv) CBL failed or refused to display on its website accurate, true, and up-to-date information on all material aspects for subscribing to a service.

**IT IS HEREBY ORDERED** that the Licensee shall:

- (i) Notify consumers of all relevant terms and conditions for all price changes and changes to non-price terms and conditions for all services and products within the timeframes specified in the Consumer Protection Regulations and/or the Licence;
- (ii) Ensure that its website and social media platforms display information that is accurate, true, and up-to-date;
- (iii) Pay a fine under section 109 of the Comms Act equal to 1.25% of the total revenues from the PRIME, PRIME Extra, and PRIME Sports packages for the month of June 2019 no later than thirty (30) calendar days from the issuance of this Order. Along with the

payment of the fine, CBL must submit financial data for the month of June 2019 in order for URCA to verify the amount of the fine; and

- (iv) Compensate customers directly affected by the non-price changes via a monetary bill credit in the amount and timeframe specified by URCA below. The compensation amounts should apply to the accounts of all impacted subscribers no later than sixty (60) calendar days from the issuance of this Order:
  - a. Subscribers of REVTV PRIME shall receive a bill credit in the amount of \$4.00 per subscriber.
  - b. Subscribers of REVTV PRIME Extra shall receive a bill credit in the amount of \$6.00 per subscriber. This will be in addition to credits applied for PRIME and/or PRIME Sports.
  - c. Subscribers of REVTV PRIME Sports shall receive a bill credit in the amount of \$2.00 per subscriber. This will be in addition to credits applied for PRIME and/or PRIME Extra.
- (v) Upon payment of the compensation, CBL shall submit a report of the compensation payment to URCA setting out the compensation amount categorised by subscription package. The report must be submitted to URCA no later than thirty (30) calendar days following the compensation payment. URCA reserves the right to request an independent verification of the compensation payment at CBL's expense.

**Failure by the Licensee to comply with this Order or any part thereof may result in a further fine not exceeding ten percent of the Licensee's relevant turnover or other penalty determined by URCA in accordance with section 109 of the Comms Act.**



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**Stephen Bereaux**  
Chief Executive Officer