



The Bahamas Telecommunications Company
Limited

Response To

**Utilities Regulation and Competition Authority's
Draft Annual Plan 2021
(URCA 06/2020)**

Legal & Regulatory Division
February, 2021

Introduction

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to respond to the Utilities Regulation and Competition Authority's (URCA) Draft Annual Plan for 2021 (the "Draft Annual Plan").

Review of URCA's Achievements in 2020

In the interest of health and safety, BTC supports URCA's position to defer all new, Tier I and Tier II 2020 projects to 2021 in light of the Covid-19 Pandemic. With the increase in the demand for reliable communication and electricity services the consideration of these projects slated for 2021 will prove to be timely and will contribute to URCA achieving its policy and regulatory objectives. BTC looks forward to contributing to the consultation process of the various 2021 Electronic Communications Sector (ECS) and Electricity Sector (ES) policy projects.

As consumers of the Electricity Sector, BTC supports URCA's ongoing initiatives and projects to promote renewable energy generation and anxiously awaits the finalization of the Consumer Protection regulations in the EC sector and its monitoring and enforcement plans.

URCA's International Participation and Engagement

BTC is pleased to learn that URCA continues its participation both internationally and regionally as the Bahamas' representative on the Executive Council of the Inter-American Telecommunications Commission (CITEL), the Council of the International Telecommunications Union (ITU), Caribbean Telecommunications Union (CTU) and the Organization of Caribbean. BTC looks forward to the fruits of URCA's participation on these international platforms and the benefits of the creation of an International/Government Relations team to effectively manage the international obligations of both the ECS and ES. It is anticipated that the creation of an International/Government Relations team will foster growth and promotion of issues affecting the sector in a more cost friendly way as well as to grow the expertise within the country.

BTC reiterates its position in previous responses that the regulator advocates for increased specialized training in this region as an executive member of CITEL thereby growing the knowledge base locally. While training abroad is useful where the individual who has received the benefit of the training remains in the sector and passes on the knowledge to other colleagues,

BTC is of the view that bringing the training to this region will be a more cost effective means of training more stakeholders and retaining the skills learnt.

Building Regulatory Capacity and Human Capital

BTC notes URCA's commitment towards creating and retaining highly qualified, professional career regulators as this is vital to URCA's strategic vision of becoming "a globally respected regulator" in a rapidly evolving era. BTC encourages URCA to utilize initiatives geared towards retaining its current employee compliment as well as attracting new employees.

Educating and Supporting our Stakeholders

BTC agrees that the regulator should continue to educate consumers on their rights and the options available to them where a stakeholder breaches any of its obligations. It is also BTC's view that educating the consumer on the role and functions of the operator is also equally important so that a consumer may make informed decisions having an understanding of the operator's position. BTC believes that in this Covid-19 environment URCA should continue to use virtual platforms and formats to educate and support Stakeholders. BTC recommends the creation of an instant messaging feature on URCA's website to encourage more contemporaneous comments. BTC supports the creation of an URCA App and encourages URCA to explore as many virtual platforms as possible to engage and support stakeholders.

URCA's Plan for 2021 - Strategic Outlook

BTC notes in particular one of URCA's focus for 2021 is the implementation of URCA's Organizational Performance Indexes,

BTC appreciates the importance of any organization developing tools to track its Performance Index, however, BTC is challenged to understand how a self-assessment tool as proposed by URCA will move the industry forward. BTC encourages URCA to also consider an objective assessment element to the Performance Index tool, this will bring another perspective to the organization's performance.

Electronic Communications Sector Projects

Market and Regulatory Regime Reviews

BTC has serious concerns with the prioritization in URCA's Draft 2021 Annual Plan of the long-promised plans to conduct reviews of the mobile and fixed services markets.

The Government's ECS Policy 2020-2023 requires URCA to implement "modern and progressive regulatory oversight to ensure that the sector and national resources are managed for optimal development and utility" (para 10). Based on a review of regulatory regimes in the Caribbean region, and more widely, BTC considers that the existing retail mobile and fixed service regulatory regimes in The Bahamas are far from "modern or progressive". The existing "rate-of-return" styled regulatory regime applicable to retail fixed services is an anachronism and continued *ex-ante* regulation of retail mobile services is unnecessary. The current regimes are counterproductive and, indeed, detrimental to the sector as well as the country.

In BTC's view, URCA should place its highest priority on completing these market reviews. BTC looks forward to a revamping, if not, elimination of existing *ex-ante* regulations of retail services in these markets in 2021.

Mobile Services Market

When URCA issued its Non Price Capped Services (NPCS) Regulations Final Determination (ECS 34/2016) in September 2016, it indicated that URCA would conduct a full review of the mobile market within 12 to 18 months – i.e., by no later than early 2018.¹ Over five years has now passed and URCA has yet to undertake that review. BTC notes that URCA collects annual market data for the mobile as well as other markets, it must have been clear years ago that Aliv is well beyond its launch and build-out phase of operations, and it has long completed its network buildout (which was condition of licence). By its own admission, Aliv has reported that for year-end 2020, it had 186,000 subscribers,² which roughly amounts to a 50% market share. Aliv also announced revenues of \$42 million and an \$8 million "contribution" to CBL for the second half of 2020,³ evidence that Aliv is generating very strong financial results. In ECS 34/2016, URCA indicated that the NPCS Regulations which applied to BTC alone were "interim" in

¹ ECS 34/2016, page 10.

² The Tribune, "Aliv Set To Double Cable 'Contribution'", February 4, 2021. Link: <http://www.tribune242.com/news/2021/feb/04/aliv-set-double-cable-contribution/>

³ Ibid.

nature,⁴ to allow time for Aliv to become established in the market. It is BTC's view that, that time has clearly long passed.

BTC believes that a mobile market review does not need to be a complex or lengthy exercise. URCA already has in hand most, if not, all the data needed to complete the review. In BTC's view, the results of that review will readily show that the continued application of the NPCS Regulations to BTC's retail mobile services is unwarranted, unnecessary and currently impeding *de facto* competition in the sector. To the extent any continued *ex-ante* regulation of retail mobile services is found to be necessary, BTC believes that it should be applied symmetrically to both Aliv and BTC to allow and promote fair competition in the mobile market.

Under the Draft 2021 Annual Plan, the mobile market review is designated as a Tier I project, although it ranks below the related Tier I project to assess the feasibility of third operator. BTC submits that the order of these two projects should be reversed. The completion of the long-promised review of the mobile market should take precedence over URCA's planned review of the feasibility of a third mobile operator, since the former effectively represents a sub-component of the broader assessment of the feasibility of third operator. The mobile market review could be completed in the second trimester of 2021 and the third operator review by year-end, maintaining URCA's objectives to this year.

As regards the feasibility of a third mobile operator, BTC looks forward to contributing to this exercise and hopes that factors such as the sustainability of the current sector and reasonable returns on investment in The Bahamas, an archipelago of islands will be considered.

Fixed Services Market

In the Draft 2021 Annual Plan, URCA's long-promised review of fixed service markets is designated as a Tier II project and, as a result, is slated for completion sometime in 2022.

⁴ ECS 34/2016, page 23.

BTC proposes that this project should be re-designated as a Tier I project for completion in 2021. An option maybe to combine the mobile and fixed service market review projects.

In 2014, URCA issued its Final Determination on its Significant Market Power (SMP) Assessment of ECS markets in The Bahamas (ECS 14/2014). For those retail services for which URCA concluded were provided by SMP operators at the time, it indicated that price cap regulation would be introduced and applied as necessary. Over six years have now passed and there has been no progress on determining what specific fixed services, if any, should be subject to price cap regulation. Since that Final Determination was issued in 2014, CBL has significantly expanded its position in the fixed voice market and mobile is increasingly seen as substitute for fixed voice services; CBL, BTC and others compete in the fixed and wireless broadband market; and BTC has launched an IP-based pay TV service in competition with CBL's longstanding cable TV service. While retail fixed service markets have changed dramatically, URCA's antiquated "rate-of-return" styled regulation of retail fixed services remains in place. In BTC's view there is an urgent need to review retail fixed service markets with a view to eliminating unnecessary and counterproductive *ex-ante* retail fixed service regulations and to ensure what any regulations that are retained are applied symmetrically to both BTC and CBL. BTC is hopeful that this long-promised project will not be punted one more year down the road.

BTC firmly believes that eliminating unwarranted and unnecessary outdated regulations will allow URCA to adopt a more modern and progressive regulatory approach and, ultimately, better promote competition and innovation in the sector to the benefit of consumers in The Bahamas.

National Spectrum Plan

BTC's view of the National Spectrum Plan (NSP) is that it is favorable to the growth of the Electronic Communication Sector (ECS) in the Bahamas. BTC noted that URCA has moved swiftly with the pace of technology in opening new frequency bands that will pave the way for advanced wireless services such as those outlined in IMT-2020.

In the aftermath of Hurricane Dorian BTC endeavored to use all its resources to restore services in Abaco and Grand Bahama however allocation of spectrum was noted as an area that proved

challenging due to the existing application and approval procedures. The experience no doubt was a learning opportunity for all and BTC hopes that moving forward changes would be made that would allow for better responsiveness by URCA especially during and after disaster and emergency events.

BTC notes that the NSP the Government's ECS Policy over the next few years and though BTC looks forward to contributing to these objectives, it would also like to see more autonomy being placed in the regulator. BTC believes that as technology develops technical solutions requiring prime spectrum allocations are likely to be increasingly in demand. A more expedient process for award of these frequencies will go further to benefiting the customers.

Review of Universal Service Framework

BTC looks forward to participating with URCA in a review of Universal Service Obligations, in particular issues relating to contributions of operators to the fund and the award system for projects.

CBL Repackaging Application

BTC reserves its comments on CBLs request to repackage its RevTV service until the public consultation process.

Electricity Sector Projects

Electricity Sector Framework Development

The incorporation of the technical standards for the ES sector to eliminate any ambiguity is encouraged as this goes towards one of URCA's main objectives of educating the public of their rights as well as strengthening its regulatory framework. BTC is hopeful that the establishment of these technical standards will result in prioritizing the delivery and reliability of the provision of electricity services in the future.

Competition Guidelines for the ES

With the increase on the demand on the ES, BTC agrees with establishing guidelines on the application of the competition and merger control provision of the Electricity Act and views it as the ground work to create a fair competition frame work in the sector.

Electronic Communications Sector Budget 2021

BTC notes the decrease in professional service fees from 2019 and the anticipated increase of staff costs budgeted for 2021. BTC supports URCA's plan of increasing its investment in its number one asset, its staff and views it as an investment into the future of the organization. BTC also encourages URCA to consider ways to increase its specialized knowledge which can eventually reduce the reliance on consultants thereby reducing the cost of professional services.

An area of concern for BTC is the sharp increase in General and Administrative expenses from 6% to 13% due to the allocation of bad debt resulting from fines issued in 2020 currently under tribunal review. BTC is curious about this approach to bad debt, especially as it relates to fines. BTC hopes that URCA would consider separating these disputing fines as provisions instead of its currents policy.

Conclusion

BTC looks forward to URCA finalizing it's 2021 Annual Plan and hopes that URCA will consider its re-prioritization suggestion.

Reservation of Rights

BTC has addressed the issues but reserves the right to comment further on all issues and states categorically that the decision not to respond to any issue raised on this Draft Annual Plan in whole or in part does not necessarily indicate agreement in whole or in part with URCA's position; nor does any position taken by BTC in its response mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.

The Bahamas Telecommunications Company Limited (BTC)

February 22nd, 2021

