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**Response to Consultation on the URCA Draft
Annual Plan 2021**

ECS 06/2020

Submitted to

The Utilities Regulation & Competition Authority

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1. Introduction

Be Aliv Limited (Aliv) and Cable Bahamas Ltd. (CBL) thank The Utilities Regulation & Competition Authority (URCA) for the opportunity to comment on its draft annual plan for 2021. The work carried out by URCA has a significant impact on the consumers and operators in the regulated sectors, and we appreciate being able to provide our views on the work to be carried out by URCA during 2021. Aliv and CBL hope that these comments will assist URCA in finalising its programme of work. We do not comment on the work done or proposed for the electricity sector.

2. Review of URCA's achievements in 2020

2.1 Overview

In Section 2.1 of its Annual Plan, URCA explains how the pandemic has underlined the importance of the electronic communications sector to the economy and social fabric of The Bahamas, and how the pandemic has accelerated the use of broadband and the digital revolution. It acknowledges the need for a "fluid approach" to the regulatory environment, but does not spell out what this means in practice.

We invite URCA to think through how its regulatory strategy needs to change as a result of the experience of the pandemic, for example:

- The electronic communications sector is evolving much faster (for example in the rapid decline in the Pay TV market driven by OTT and content piracy and the explosion in the demand for broadband bandwidth). URCA needs to examine where regulation of the sector is absolutely necessary, and where it can remove regulatory barriers, so that the industry can respond more quickly to the changing demands of businesses and consumers. URCA's regulation of retail prices is a prime candidate for such a review to ensure regulatory reviews are targeted and do not slow down or otherwise negatively affect innovation in the market.
- URCA itself needs to become more agile, and slicker in its processes and decision-making. We comment on its project timetable and management below.
- URCA needs to rely more on commercial incentives and less on regulatory intervention, and to be more forward-looking. For example, it should now be preparing for the introduction of 5G technology, but this is not mentioned anywhere in its 2021 Annual Plan.
- A fundamental change is taking place in the electronic communications marketplace, with a coalescence of fixed and mobile, voice and data, operators and content providers. As with other national regulatory authorities, URCA has based its regulatory approach on the identification of separate markets, and we consider that this approach is becoming increasingly out of date. While it will take some time for the implications of this to work through, URCA should show increasing flexibility in its regulatory approach.

We note that URCA recognises the need for a "comprehensive review that incorporates progressive and innovative approaches" but gives no indication of how this should be taken forward. While URCA gave some indications during its Stakeholder Webinar on 10 February about the scope and timing of this review, we are concerned that the review will be backward

looking back at URCA's past performance rather than towards the future requirements of a rapidly changing industry. If the review is undertaken only by URCA's staff, it is very unlikely that they will be able to develop "innovative approaches" – even with the best will in the world, staff in regulatory agencies are not innovative thinkers. URCA needs to involve outside contributors – for example from academia, stakeholders, international organisations such as the ITU, and even a Bahamian Citizens Assembly – in this project if it is to be worthwhile. We request that URCA sets out in its final work plan some clear terms of reference and a timetable for its comprehensive review.

2.2 Performance against URCA's 2020 Annual Plan

In Section 2.2.2 URCA lists eight ECS projects that it completed during 2020, and six that it deferred to 2021 (seven if the mobile market review is included). URCA places the responsibility for the deferment on the pandemic. We consider that this is not acceptable and that URCA should have adapted its working methods and practices so that it could continue its work during the pandemic – as most other organisations did successfully during 2020. In particular, it could have continued its survey programme by commissioning remote surveys.

It is disappointing that URCA has not taken the opportunity to question whether the deferred projects should be redefined so that they can be carried out more efficiently, or whether they still have the same priority in the changed environment of 2021. As discussed below, we consider that the universal service project is in urgent need of redefinition.

Given the slow progress on its projects and the high rate of deferment, Aliv and CBL consider that URCA should review its project management system. By the standards of the commercial sector, URCA's timescales for completing projects, typically years rather than months, is very relaxed. For example, the average duration of the six ECS projects listed in Table 1 (page 26) as having been completed in 2020 is over two years. As we have noted in our previous comments on URCA's annual plans, this is not a new problem. URCA has consistently been unable to meet many of the target dates set out for project completion in its Annual Plans. URCA should review whether it needs to have sharper terms of reference for its projects, a more ambitious timetable, and a better system for monitoring progress, anticipating delays and undertaking any necessary remedial action. Clear responsibilities for project management and a process of regular review by senior management are also necessary. In the past we have suggested a "payment by results" compensation system, and URCA should consider whether this is now necessary to signal the importance of effective project management and the meeting of targets to its staff.

2.3 International participation and engagement

We note the international activities described in Section 2.3 (page 20), and the creation of an International/Government Relations Team in URCA. We are concerned about the expansion of resources in URCA to such work. The "benefits" are often nebulous and intangible, and staff may be keen to do such work, with its opportunities for foreign travel and wider horizons. However the cost, in terms of both the increases in the annual fees levied on the operators and the opportunity cost of the work that is foregone as a result, can be considerable. Given URCA's difficulties in completing its core work programme, we ask URCA to control strictly the work of this team and the resources given to it and to consider whether it should be redirected to more important work.

2.4 Building regulatory capital and human resources

CBL and Aliv agree with URCA that it needs to improve the quality of its human resources. However, URCA seems to concentrate on investment in its current staff. While this is important, it also needs to consider how to bring in people with the required additional experience of the electronic communications sector and expertise in regulation. This could include recruitment from other countries, the greater use of consultants, secondment of staff between URCA and operators, and exchange programmes with other national regulatory authorities in the region.

3. URCA's plan for 2021

3.1 Strategic outlook

In Section 3.1 (pages 29 and 30) URCA provides an overview of its work for 2021. We agree that URCA needs to improve its organisational performance, but are concerned that the focus is internal to URCA's organisation. The priorities, as expressed in this section, will be the three major initiatives on the organisational performance indicators, a learning and development framework, and a cultural renewal process. Moreover, the priorities for the electronic communications sector, as described in bullet 2 on page 30, are also internally focussed on URCA's impact on the sector and on where increased regulatory intervention is necessary. URCA appears to become more remote from the needs of the sector, especially given the rapid changes taking place as described above. In order to counteract this trend to greater introspection, URCA should establish more formal liaison platforms with the sector, for example through an industry forum, so that it can maintain contact and communication with the "real" world.

We note that bullet 2 is a repeat of a statement made in the 2019 Annual Plan, and we repeat our comments that URCA should be looking for areas where regulatory intervention can be reduced. The last ten years have seen dramatic changes in the levels of competition in fixed and mobile markets in The Bahamas, and in general the advance of competitive markets should result in a reduction of regulation, not further regulatory interventions.

The proposal for the review of URCA's impact has not, as far as we can see, been translated into a project for 2021, and as this work could be unfocussed and ineffective, we look forward to URCA producing a clearer statement of the scope of work and the work programme for this review.

3.2 ECS comprehensive market survey

We welcome the surveys proposed by URCA as they will provide valuable insights about consumer usage and attitudes that may have a significant impact on URCA's market reviews and other work. We ask URCA to publish the results of these surveys so that the industry as a whole, including new entrants, can benefit from this market knowledge. We note that this is the practice of other national regulatory authorities, such as OFCOM¹.

We also suggest that URCA considers how to collect the information it requires during the pandemic, as restrictions on face-to-face interviews may last for some time. It should consider

¹ See: <https://www.ofcom.org.uk/research-and-data/multi-sector-research>

faster and less costly remote interviews. While these may not be so rigorous as properly randomised face-to-face interviews, they may provide sufficient information for URCA's purposes. This may be necessary to avoid further delays to URCA's market reviews for the mobile sector and fixed services.

3.3 Review of universal service framework

In the recently published Sector Policy, the Government revised the Universal Service obligations set out in the Communications Act 2009². This included a minimum broadband speed of 2 Mbps. This minimum is already out of date, and as evidenced during the pandemic, is inadequate for the current requirements of businesses and consumers. The focus of URCA's project, as set out on page 42, is the enforcement of the current requirements. We suggest that this focus has been overtaken by the need to consider how fixed or mobile network operators can be incentivised to provide superfast broadband across all of The Bahamas, and how this may be financed. We therefore urge URCA to rethink this project.

We also suggest that the timescale of three years for this project is too relaxed. Following the pandemic, which has illustrated how dependent businesses and consumers have become on telecommunications for economic activity, education and social connections, the issue of how adequate broadband connections can be supplied to the whole population deserves more urgent action. People unable to access broadband services because of limited ability or means, and those living in areas where the provision of broadband is uneconomic, face more limited economic and social opportunities than those fortunate enough to have good access. Addressing such an inequality requires a partnership between the operators, URCA and the government, and we consider that URCA should focus on this issue as a matter of high priority.

3.5 Mobile market assessment – the feasibility of a third operator

Ten to fifteen years ago the advent of additional mobile operators in a national market was seen as desirable and necessary. However, the mobile market has changed dramatically since then, and any review carried out by URCA needs to recognise that:

- Most mobile markets have become mature, with little scope for the recruitment of new customers. While penetration rates above 100% occur in many markets, including The Bahamas, these indicate the possession of multiple SIM cards (to take advantage of on-net pricing) or the use of mobile devices for non-human interaction ("the internet of things"). The Caribbean markets are seeing a reduction in the number of operators, not increases.
- Much of the profits earned by mobile operators in previous years have been competed away, returned to customers through lower prices or appropriated by the providers of broadband and over-the-top services. However, the need for investment, especially in providing capacity for data services and 5G services, means that the business case for a new network operator is difficult in most countries.
- Mobile market competition is already working in The Bahamas. Since the arrival of Aliv in 2016, the market has been revolutionised (for example, the end of receiving party pays), innovation has flourished (for example with the introduction of voice, message

² Government of The Bahamas. Electronic Communications Sector Policy 2020-23. 19 March 2020, paragraph 19, pages 11-13

and data bundles), and prices have fallen. The price benchmark produced by the ITU shows that The Bahamas now has the most affordable mobile prices in the Caribbean when measured as a percentage of gross national income per head³.

- In The Bahamas, a decision on a third operator will have a direct impact on investment decisions to be made by the existing two mobile operators. The government may be faced with a decision of whether it wants a third network operator or investment in 5G networks. URCA's review needs to include this dimension.

We suggest that URCA should base its recommendation about the third mobile operator on whether the retail mobile market is competitive or not, rather than on extraneous factors such as the government's need to raise additional revenues. URCA would need to review the retail mobile market for price competitiveness and innovation, as part of this project.

The uncertainty over whether there will be a third mobile operator will have a chilling effect on the investment plans of the existing operators, and in particular will delay any investments in 5G. URCA therefore needs to complete this review with the utmost urgency, and should organise the review so that the Government can make its decision on the matter by the end of September 2021.

3.6 Market review of mobile services

URCA is examining the mobile call origination and termination market. The review of the mobile call termination market should be quick and brief, given that URCA undertook its last review of the mobile call termination market as recently as 2016⁴, and published in its Final Decision its Final Decision on the most important remedy, the mobile termination rates, in December 2019⁵.

The review of the mobile call origination market deserves a different approach, and needs to be closely coordinated with the mobile market assessment – the feasibility of a third operator. If, for example, URCA finds that the call origination market is not sufficiently competitive and decides to implement remedies on any SMP operator, this is likely to impact on the financial viability of the other network operators. We note that, while in larger countries the mobile market may still be large enough to permit profitable entry for virtual operators and new network operators, the market in The Bahamas is too small for such market entry. URCA needs to work out its overall strategy for the mobile market in parallel with any review of the mobile call origination market.

³ International Telecommunications Union. Measuring digital development – ICT price trends 2019.

⁴ URCA. Assessment of Significant Market Power in Mobile Call and Short Messaging Termination Services on NewCo2015 Limited's Cellular Mobile Network in The Bahamas under Section 39(1) of the Communications Act, 2009. Statement of Results to Public Consultation and Final Determination. ECS 33/2016. 30 September 2016.

⁵ URCA. Wholesale Fixed and Mobile Termination Rates for SMP Licensees - Response to Public Consultation and Final Determination. ECS 74/2019. 23 December 2019

3.7 ECS Market Surveys (Pay TV and FM Broadcasting)

Please see our comments on the ECS comprehensive market surveys above.

3.8 Review of spectrum management

We welcome URCA's review of its spectrum management functions, and the updated National Spectrum Plan, published in 2020. It is important that URCA's spectrum management functions are carried out effectively and efficiently, so that spectrum can be planned and managed optimally, and that any interference with spectrum rights is quickly identified and resolved. It is also important that URCA has access to the appropriate equipment for its work, and it may be possible to contract out some functions to the commercial sector. We hope that URCA will work with the operators in this review and look forward to participating.

URCA needs to review its processes for issuing additional spectrum to the existing operators, so that there is a fast and simple application and decision making process. With the huge expansion in the public's demand for mobile broadband data services, operators need to access additional spectrum in order to maintain their quality of service to customers. Faster and more flexible processes will become more urgent with the advent of 5G.

During its review of spectrum management, URCA also needs to consider the scope for reducing regulation of spectrum, for example by allowing operators to optimise their spectrum holdings through a spectrum trading scheme.

3.9 Monitoring and compliance review

We suggest that this review should include the identification of areas where reduced compliance can be justified so that the costs imposed on operators and on URCA by the monitoring of compliance can be lowered. When URCA comes across an area where operators are not complying with its regulations, it needs to question whether this is for a good reason, such as the regulation is no longer relevant or beneficial.

3.10 CBL Repackaging Application

CBL notes the inclusion of its repackaging application in the Annual Plan and looks forward to working with URCA on the successful implementation of this major stage of its content strategy. The repackaging plans are designed to offer more tailored TV plans for individual segments in the market, for example customer groups interested in local content, sports, children's programs, music and lifestyle entertainment. This is a big step away from the historic 'one size fits all' approach with customers increasingly requiring specific and relevant content in real time and over multiple platforms. The initial feedback received through CBL's public consultation on these plans is very positive and these plans in themselves are a reflection of the profound changes in the content industry, with content owners increasingly offering services directly to consumers in competition with the traditional broadcasting model.

3.11 Market review – fixed services (including pay TV)

The pay television market has changed dramatically in the twelve years since the Communications Act determined that it should be regulated in 2009. With the advent of fixed and mobile broadband, the introduction of BTC's television offering, and the emergence of

strong international competition (such as Netflix, HBO, Amazon Prime and, more recently Disney and Apple TV), the pay television market is very competitive. Recent years have seen a significant decline in the number of CBL's Pay TV subscribers as they migrate to broadband services. Hence we believe that there is no longer a case for the regulation of this service, and that URCA should address this aberration in the regulatory framework of The Bahamas as a matter of urgency.

We are very disappointed to see that this project is still listed as a Tier II project and ask that the review of the pay television market (or indeed the more relevant market for content) is separated from the fixed market review and made a Tier I project for 2021.

4. Evaluating URCA's effectiveness

We continue to support URCA's move to more meaningful OPIs. However, we wish to draw URCA's attention to the detailed comments we made in our response to URCA's consultation on market information reporting requirements in December 2020. We hope that they demonstrated the need for URCA to exercise care in the selection of its OPIs and the value in learning from the experience of other countries. We suggested that URCA should consult on its OPIs so that both URCA and its stakeholders can develop a better understanding of the OPIs' value and limitations. As URCA is not intending to implement the OPIs until 2022, URCA still has time to carry out a public consultation on them, and we suggest that it makes a commitment to do this in its final work plan.

5. Draft budget for 2021

We are pleased to see that the ECS licence fees will be reduced significantly for 2021, by some 17%, but we recognise that this is because certain items of budget expenditure did not take place in 2020 because of the pandemic. However, URCA needs to control its budget tightly, and we are concerned to see the proposal to increase its staff complement by 23%. As stated above, URCA does need to make sure that its use of the current staff complement is effective and efficient before embarking on a substantial increase in staffing numbers. While we do not doubt URCA's need for additional suitably qualified staff, we remind URCA that the operators will bear the costs of these additional staff through the payment of licence fees for years ahead. It is therefore important that the new staff positions are fully justified and that URCA does not recruit staff for unnecessary work.

We are surprised to see the doubling of General and Administrative Expenses with the reason given being bad debts. Although this increase falls mainly on the Electricity Sector, we fail to see why URCA's failure to collect debts should be passed on to licence holders. URCA should not include fines as income in its annual budget given their uncertainty, and a bad debt is entered as an expenditure only to balance invoiced and uncollected income in statutory accounts. It should not be used in forward looking budgets, and moreover it is unjust that innocent licensees have to bear the costs of fines not paid by guilty licensees through the addition of a bad debt to their licence fees.

We note that in the budget for the electronic communications sector the General and Administrative Expenses are increased by 10% for 2021, but no explanation is offered for this significant increase, and we ask URCA to include an explanation in its final Annual Plan for 2021.

Aliv and CBL will, of course, be pleased to expand on these points if this would assist URCA in its revision of its Annual Plan 2021.

Respectfully submitted

On behalf of Aliv and CBL

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