



Response to URCA's Draft Annual Plan 2022

Submitted to

The Utilities Regulation & Competition Authority

ECS (URCA/2022)

7 February 2022

1. INTRODUCTION

The Cable Bahamas Group of companies (the Group) incorporating Be Aliv Limited (Aliv) and Rev are pleased to have been given the opportunity to participate in and contribute to the annual planning process of the work projects of The Utilities Regulation and Competition Authority (URCA) for the year 2022. Now, even more than ever, the work carried out in the Electronic Communications Sector (ECS) with its very strong links with ICTs (Information Communications Technology), the latter having been designated as the third pillar of our country's economy, has far reaching implications for the socio-economic and educational improvements of the country. The Group therefore recognizes the Annual Plan as an important progressive element in the development of the sector and hence takes its contributions with the utmost seriousness.

Indeed, Rev and Aliv congratulate URCA for its foresight in introducing a new element to the annual planning process, namely the engagement of operators in a pre-planning collaborative process by providing an early opportunity to have an open discussion on matters of priority and concern to the operators which enhances URCA's awareness of the sector and which may be factored into the preparation of the Annual Plan.

The discussions between URCA and the operators reflect the G5 level of The International Telecommunications Union (ITU) ratings of regulatory practice which includes Collaboration, Dialogue and Harmonization in Regulation. We are proud that The Bahamas has been officially rated at G4 for Integrated regulation led by socio-economic policies, and is just one step away from the enviable G5 rating. URCA is to be commended for effectively and efficiently marshalling the country's regulatory regime to this enviable level, achieved by scant few in the region.

The Group is also pleased to note that some aspects of its discussions with URCA are reflected in the 2022 draft work plan and include topics most relevant to the evolution of the sector. It is therefore in the spirit of collaboration, dialogue and harmonization that the Group submits this response as we all, Regulator and Operators alike seek to improve and ensure best practices in our sector.

The Group now calls on URCA to facilitate a similar session between URCA and the Minister responsible for the ECS with a specific agenda to include the responses provided by the Individual Licensed Operators (ILOs) on matters of national importance. We note that too often minority special interest groups are louder and are heard and accommodated without reference to ILOs who can be negatively impacted by resulting decisions and who carry the burden of the sector!

2. REVIEW OF URCA'S ACHIEVEMENTS IN 2022

2.1 General

In its 2021 Reply to URCA's 2021 Annual Plan, the Group invited URCA to learn from its 2020 pandemic work challenges going forward so as to not further delay critical work outcomes.

The Group is pleased to see that URCA acknowledges that it has gained more confidence to manage the pandemic as indeed, we all have. URCA now sees the pandemic influence extending to a rethink of the intended regulatory reform which will transcend any single sector or any industry and include the global digital revolution which has been spurred on out of necessity by the pandemic. We agree with URCA that this reform rethink will require a paradigm shift in the Regulator's approach to sector oversight and, dare we say, a more flexible and accommodating approach.

We commend URCA's stated objective to promote the transition to a digitally inclusive society through the ubiquitous deployment of ICTs in e-commerce, innovation and new business opportunities as ICTs begin to take their place as the third pillar of the economy. ICTs will, however, not become the third pillar without URCA's intervention in influencing the Government stakeholders to include ICT infrastructure costs within the National Budget inclusive of financial concessions as it is recognized in the industry internationally that public – private partnerships are essential to the successful development of telecommunications infrastructure upon which ICTs sit. URCA can play an important role in educating Government stakeholders on the sector requirements which must include a National Development Policy and Plan for the development of ICTs over a specified period of time with a commitment for a designated owner at Cabinet level to drive the process. The pandemic has underlined the key role that ICT plays in the education, health and retail sectors, as well as in the broader economic and social well-being of The Bahamas. An integrated approach is needed between public and commercial sectors on matters such as 5G, fibre network roll-out, and the provision of universal service to more remote parts of the country. We suggest that URCA should include this perspective in the final Annual Plan for 2022.

We are impressed with the successful implementation of URCA's solar panel car park, a positive step towards ICT commitment and modifications to mitigate the impact of climate change.

2.2 URCA's Performance in 2021

2.2.1 Internal Restructuring

URCA's restructuring of the Corporate and Consumer Relations Team and the establishment of an Internal Government Relations Unit with dedicated resources to international organizations is also to be commended. We would wish to see with particular regard to the Unit, URCA exerting its influence on Government stakeholders in relation to recommendations made by international bodies for in country objectives for ICTs. We assume that with the dedicated resources the earlier concern that work at home may be neglected is removed.

URCA's staffing remains a concern given the turnover rate which contradicts URCA's view of itself that it is "*an attractive employer for young professionals...*" We know that talented Millennials and Generation Xers do not seek cradle to grave employment and move frequently between jobs. The Group looks forward to a regulator that is fully staffed with well trained, competent and motivated officers who have also built on the job expertise over a period of time. URCA's commitment stated at Section 2.4 (Building Regulatory and Human Capital) to establish a Learning and Development Framework with targeted instruction goals together with a Leadership Development programme and motivated committed leaders at the senior level of the organization should go a long way towards achievement of these improvements, notwithstanding that the financial burden will fall on we the ILOs via the licence fees. URCA may wish to look at its compensation structure which, whilst originally meant to be competitive with the industry and equivalent professions, is sadly lagging. We have previously suggested that URCA should look at a compensation structure that includes payment based on results, as used by some other regulatory authorities in the Caribbean region.

We congratulate URCA on recognizing that it has a problem in retaining competent staff and suggest that it examines other ways of ensuring that it has the expertise for effective regulation, such as secondments from operators, twinning with experienced national regulatory authorities in other countries, or working with academic institutions.

2.2.2 URCA's Performance Measures

We note URCA's statement under Section 2.2 that it is committed to developing a work plan that allows stakeholders to assess its performance effectively based on output and input. The Group has for several years requested that URCA considers seeking input from licensee stakeholders on its performance, to no avail. What exactly is meant by the statement is unclear.

The key performance indicators set out in Table 6 (page 36) continue to be the measurements of internal performance, rather than the external measures proposed by URCA. The operators are already providing the data required by URCA for its performance measurement, and it is disappointing to see that URCA is not using this information. For example, there is no need to review the costs of the HR or Finance function relative to total cost, unless that total cost is confirmed as efficient relative to the size of the sector.

We note also that in its Performance Measurement criteria against the 2021 Annual Plan URCA has now adjusted the approach to the prioritization of projects by reducing the Project Plan to two tiers, Tier I whose objective is to complete those projects in the current year and Tier II projects which because of external co-dependencies do not necessarily have a specified timeline. It may be beneficial to licensees as well as to URCA itself if URCA were to manage expectations with Public Consultations by including the phases (if there are phases) involved in the Consultation and leading up to the Final Determination in the published project plans.

2.2.3 URCA's 2021 Projects

URCA's Organization Performance Indexes (OPIs) saw a phased implementation in 2021 with URCA heeding the advice of Licensees to reduce the addition of numerous data requirements in related Licensee reports.

The Group is looking forward to the publication of the results of several Market and Consumer surveys undertaken and completed or partially completed by URCA in 2021 with results promised in the first trimester of 2022.

Rev's TV Repackaging Plan Application underwent rigorous consumer and subscriber engagement at URCA's behest and was one of URCA's successfully completed projects in the designated time frame. The Group awaits the results of the ECS market surveys on Pay TV as it has made no secret that its overarching objective is a deliberate and fast paced move towards deregulation of the Pay TV market with the removal of the SMP designation (particularly given the competition with OTT services) and a focus initially on ex-post regulation followed only by wholesale regulation and evolving to a regulatory regime which does not impede the commercial freedom of Licensees and allows for nimbleness and flexibility to respond to the demands of consumers as per the Repackaging exercise. Indeed, the entire Pay TV industry is in flux, with the owners of content now developing direct channels to market, in competition with their traditional distribution partners the TV operators. The distribution of content is also not part of a 'fixed market' as defined by URCA. Content is now accessed across multiple platforms including mobile. It is the Group's view that even a cursory review of the evolving supply chain of content services will reveal that the real market power is in the hands of the content owners, not the traditional distributors of content in TV form. The revolution around the flexible viewership habits of consumers and the changes being made by programmers unilaterally causing further dilution of the TV product must be recognized by URCA and URCA must address the steady decline of traditional TV viewership in the face of competition from external and unlicensed players who, when included in the count with licensed operators

provide proof that significant competition does exist and that consumers do have multiple choices. The losses incurred in the Pay TV market by URCA Licensees demands the removal of the dominance label and a completely new approach by URCA in order to level the playing field.

The Group is always excited to participate in URCA's flagship annual outreach programme to our youth and appreciates the evolving face of the Girls in ICT programme which is consistent with the rapidly evolving ICT markets.

In keeping with the digital transition which has significantly sped up our society's use of digital technology, URCA has kept pace through the use of webinars and social media engagements in keeping with its mandate to educate and support stakeholders, particularly consumers at every level. We are of the view that the expansion of the regulator's footprint in the digital communications space is vital. As always we encourage URCA to ensure that there is a balance in its obligations to both Licensees and consumers as to tip the scales too precipitously could impact the profitability and hence viability of Licensees.

2021 carry over projects include the Review of the Universal Framework as mandate in the Sector Policy and the Market Review of Fixed Services. ICTs for Persons with Disabilities is ongoing.

The Group recognizes the importance of representation by The Bahamas at international organizations like the ITU and CITELE but would urge URCA to ensure its key resources are focused on the local market, particularly in light of URCA's observation that there is a 'declining pool of internal leadership resources at the departmental, regulatory and executive levels' and a high turnover in staff.

3. URCA's 2022 PLAN

3.1 General Overview

We applaud URCA's strategic approach to the 2022 proposed work plan which acknowledges the "Rapid evolution of the telecommunications and the electricity sectors and the corresponding capacity to provide regulatory leadership" as the catalysts! We agree with URCA that leadership must be "visionary, engaging and responsive in order to inspire stakeholder's confidence and stakeholder's commitments" as critical to the growth of these sectors which underpin our socio-economic development. And as a result of the pandemic lessons learned we would include education in addition to the socio-economic aspects.

We would also encourage URCA in its quest to effectively regulate the sector not to overlook the value of collaborative engagement rather than heavy handed approaches in all areas of regulation. URCA has, in fact, demonstrated its willingness to collaborate and we look forward to the further advancement of this approach. It is easy for the regulator to overlook the overwhelming obligations which Licensed Operators have to manage and operate a going concern, namely the business of telecommunications in all of its parts, whilst simultaneously adhering to licence compliance obligations.

We note that URCA's financial and planning year starts on 1 January, but its consultation started on 20 December. When the final Annual Plan is published at the end of April, URCA will already be four months into its year. URCA may wish to bring forward and speed up its planning cycle so that it is completed before the start of the year. Stakeholders will then feel more confident that they are able to influence URCA's work through their comments on the draft Plan.

3.2 URCA's Key 2022 Projects (Tier 1)

URCA has an ambitious work plan for 2022. There are six carry-over projects including the review of Fixed Services including Pay TV. This project was first included in URCA's work programme in 2019, and CBL is very disappointed that no progress has been made on it over the last three years. As previously explained, the Pay TV market continues to evolve to the detriment of traditional services and has become a loss leader. We anticipate URCA engaging with operators to alleviate regulatory constraints which hinder the required flexibility and innovation required to resurrect a dying product. Over the years URCA has included projects on the introduction of price caps instead of the current retail prices controls in its work plans, but has made no progress on the matter. We hope that the review of fixed services will address the issue of whether retail price controls are still a necessary regulatory remedy.

The Group, and Aliv in particular awaits URCA's recommendation to the new administration on the feasibility of a third mobile operator. We note that now that the mobile market review is completed, the feasibility assessment will begin by URCA. The recommendation is based on a statutory obligation and we trust that consideration will be given to the maturity of the market, the high penetration rates and the competitive pricing between the existing two operators. The effects of the pandemic have also had a negative effect in the mobile market, particularly with roaming and the conclusion coming from research in the region that more often than not three mobile operators are not sustainable in a market of this size is instructive. It is important that URCA pays attention to the international trends in the mobile industry, such as the need for additional investment to keep up with the demands for additional broadband capacity and new (5G) technology, and the decreasing revenues resulting from competition from content and OTT providers. As a result the mobile industry is now consolidating in many markets, and URCA needs to understand such drivers if it is to assess the feasibility of a third operator properly.

The completion of the mobile market review marks an important demarcation in the regulation of the mobile voice market as the successful launch and establishment of Aliv as a major player in the space should ideally lead to a deregulated mobile voice market with the removal of dominance labels, as happens in many other jurisdictions.

With regard to Tier 1 work projects we note that there are seven items, three of which will commence and be completed within 2022 with the remaining four having started earlier and continuing to conclusion. The Group, and Aliv in particular agrees that the public consultation on 5G is important and a crucial issue for the country as it awakens from its covid isolation. Both mobile operators at the invitation of Cabinet have had earlier individual confidential engagements with Cabinet. We suggest that it will be of assistance for URCA to consider how countries around the world are tackling the introduction of 5G services on the back of their 4G and LTE networks. More often than not 5G is launched under a national policy on 5G as agreed between the Government, Regulator and mobile operators and is generally related to the specific types of demand and spectrum availability and pricing, with a phased introduction in the various sectors over a period of time.

It became clear during our interactions with Cabinet that the issue of 5G in The Bahamas cannot be seen in isolation from other regulatory matters, in particular the provision of universal service in the Family Islands, the funding of infrastructure roll-out, the review of spectrum management and the third mobile operator. It is essential that URCA makes the linkages between these issues, which are currently seen as separate projects, and adapts its planning to facilitate a holistic assessment. Such an assessment will likely bring out various policy trade-offs that need to be made. For example, 5G is likely to be a key element of the technology mix to offer high speed broadband services, however the business case for 5G is much weaker than was the case for 4G and it is unlikely that ICT sector in The Bahamas can profitably sustain two parallel 5G networks, let alone

three. The roll-out of 5G will be further impacted by any obligations to offer service and coverage in less populated areas of The Bahamas.

We do note and underscore URCA's stated intention as a supplement to the 5G public consultation to engage the Government and key telecoms stakeholders on national broadband and infrastructure inclusive of investment options.

It is the considered view of this Group that nothing is more relevant in 2022 than the education of and involvement of Government stakeholders in particular with the requirements of the telecommunications sector if the quantum advances are to be made towards ICT as the third pillar of the economy. Lip service will certainly be of no effect. The benefits to be derived from a robust and extensive national broadband infrastructure and 5G services to the rapid advancement of a sophisticated economy must of necessity involve a financial partnership between government and operators with government firstly setting out its national policy and plan followed by financial investment and concessions. Should Government not want to or be unable to contribute financially then it must step aside and be receptive to private local and or foreign investment. We urge URCA to do the necessary research and preparation and to be the bridge between the parties to ensure success in this most important initiative.

Again we welcome the infrastructure upgrade by URCA to restore the National Spectrum monitoring system which is a priority issue for 5G spectrum and for further expansion of the sector's growth by ensuring progressive spectrum management and increased efficiencies.

The 2020 – 2023 ECS Policy required action on URCA's part over the three year span to give effect to the revised Universal Service obligations contained therein including an expanded National Broadband Policy, public access to pay terminals and broadband internet access to all locations and specified institutions. We note also the instructions given to URCA that URCA "vigorously enforce" those obligations which are not being revised. We are interested in the manner in which URCA will carry out such enforcement given the ubiquity of mobile voice and broadband services throughout the archipelago with the liberalization of the mobile market, the advancements in technology and the adjustment to the reality that voice is no longer king. We would expect flexibility from URCA as indeed was achieved with REV's successful introduction of DHL satellite services in the Family Islands in 2021.

We note that URCA plans to take three years over the Universal Service project, which has already been delayed from previous years. The experience of the pandemic has underlined how important broadband service is to all parts of The Bahamas, and we suggest that this review needs to be forward-looking rather than concerned with existing standards, which are clearly out of date. We also suggest that the timeframe of three years is far too long for such an important project, and that either additional resources should be provided for it or that the project should be redefined so that it can be completed within a reasonable timescale. We would consider this to be one year.

We agree that a further review of OTT services after the 2018 URCA review is necessary. OTT services are clearly here to stay as a part of the evolution of technology and global trends and the reality that they inflict harm on the business of licensees cannot be ignored. We are eager to engage with URCA as a part of its review to arrive at a satisfactory conclusion for all stakeholders. Recently an opinion piece by Digicel's General Counsel in the Jamaica Observer called for the harmonization of the regulatory approach towards OTTs across the region and the introduction of common legislation and regulations to control their operations and bring them in conformity with ILOs' obligations. Certainly a regional organization such as OOCUR could be of assistance with such an initiative. It is an unacceptable state of affairs that Individual Licensed Operators (ILOs) across the region comply with local regulatory obligations and pay their taxes while international providers of content take money out of the national sector with limited regulatory oversight or supervision.

3.3 Tier 11 Projects

As previously stated, the Group is supportive of accommodations for Persons with Disabilities albeit we are proposing a phased approach to their introduction.

We are also pleased to see that there will be a review of the Code of Practise for Content Regulation having regard to broadcasting content on Election Day via various technologies with prohibitions imposed on one medium and not the other. We recognize that other jurisdictions have grappled with this vexing conundrum and have not necessarily settled on a solution as it is not as straightforward a solution as it would first appear. We are, of course, most interested in the eventual conclusion.

4. URCA's DRAFT BUDGET 2022

URCA's annual budgets are of much interest and relevance to ILOs given that annual licence fees paid by ILOs are based on the said budget amount and pursuant to a formula.

4.1 The Combined Operating Budget

With reference to the combined draft Operating Budget for 2022 recovered through URCA fees for the regulated ECS and the Electricity Sectors as set out in Table 7, there is an overall increase of some \$480,000.00 or a 6% increase (excluding depreciation) compared with the prior year's budget in 2021 (a covid year of no travel, no physical conferences and no overseas training). Indeed the 2022 proposed budget is more commensurate with the 2020 budget (which also had covid restrictions for the greater part of the year) which is \$180,030.00 less than the 2022 budget.

URCA's explanatory notes on staff count increases is acceptable, however, one questions the 41% increase for the conferences training and travel category "due to the resumption of in person travel". The Group questions whether after the covid restricted in-person meetings that going forward one would not expect a complete return to the practice of travel as it became evident that significant operating expenses are incurred. A compromise should be considered and alternatives to travel adopted permanently with travel being the exception rather than the rule.

The Group notes the significant repairs and maintenance and cleaning associated with Frederick House upgrades which were included in the 2021 operating budget. It is regrettable that such an aged and sizeable building was ever purchased and again, given the new constrictions in the use of office space as a result of the fallout from the pandemic and the work from home policies, together with the general movement away from Bay Street for office space by commercial and professional entities, one questions whether there will ever be a tenant(s) for the two floors of excess space. Sadly, an old building will continue to require repairs and extensive maintenance and the best option may be for URCA to sell Frederick House and occupy newer premises.

4.2 The ECS Operating Budget

The ECS Operating Budget recovered through licence fees levied by URCA for 2022 is anticipated to increase by 16% compared to the previous year with staff costs increasing by 22%, the result of new hires. Professional services are due to increase by 19% in anticipation of the larger work volume in 2022 which includes market reviews, assessments and surveys. Litigation brought by Licencees is also seen as a significant expense to the budget.

A concern is the 28% increase in General Administration expenses attributed by URCA to an increase in bad debt expense. We would urge URCA to take pro-active measures to minimize bad debt so that it is not a burden on those licensees who are compliant with fees and fines. We assume that a process is in place to ultimately revoke licences for non-payment.

We again question the inclusion of bad debts as an expense to be recovered from licensees. The reason given for the 14% increase in the General and Administrative Expenses is bad debts, and we do not 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 the same rationale was used for the substantial increase in General and Administrative Expenses in 2021, and would like to be reassured that licensees are not paying twice for the same bad debt.

We would like URCA to review the allocation of costs between the ECS sector and the Electricity Sector. We expect that the main driver of URCA's Premises Costs and Utilities and Office Services will be its Staff Costs. However we note that the ECS sector bears 58% of URCA total Staff Costs, 68% of its Premises Costs, and 75% of its Office Costs. We would be grateful if URCA can explain these differences.

Finally, it is important that URCA is as accurate in its budget forecast as possible given that excess or unspent monies go to the Public Treasury rather than being credited to Licencees for the following year.

Respectfully submitted

On behalf of CBL & ALIV

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