



FINAL DETERMINATION AND ORDER

**Investigation into Cable Bahamas Limited's Pay Television
Quality of Service**

**Issue Date: 21 November 2022
ECS 56/2022**

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1. Introduction

The Utilities Regulation and Competition Authority ('URCA') issues this Final Determination and Order to Cable Bahamas Limited ('CBL') following URCA's investigation into the quality of service of CBL's pay television service.

The need for an investigation arose following CBL's price application to restructure/repackage its pay television packages. CBL submitted the applications to restructure its REVTV offers on 27 October 2020 for its residential packages and 20 January 2021 for business packages. Having determined the applications were matters of public importance, URCA published a consultation document (ECS 04/2021)¹ on 19 March 2021 that set out URCA's preliminary views and invited feedback from the public. Amongst the responses received by URCA, there were numerous complaints regarding the service quality of CBL's pay TV service. The most recurring issues experienced by customers were service outages, error messages, pixelated channels, an incorrect TV guide, and dissatisfaction with DVR boxes.

Although the complaints were deemed to be outside the scope of the consultation, URCA eventually approved the repackaging applications.² URCA stated in its Final Determination on the repackaging that it was important to address the complaints due to their widespread nature. As a result, URCA formally notified CBL on 20 July 2021 that it was launching an investigation.

URCA issued its Preliminary Determination to CBL on 16 August 2022. In that document, URCA presented its preliminary findings from its investigation and allowed CBL the opportunity to make representations or objections. CBL responded on 29 September 2022.

Having regard to Condition 3.3 of CBL's Individual Operating Licence ('IOL') and in accordance with section 99 of the Communications Act, 2009 ('Comms Act'), URCA issues this Final Determination and Order containing URCA's conclusions and remedies consequential to its investigation.

The remainder of the document is set out as follows:

- Section 2 provides 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 consists of URCA's Final Determination.
- Section 5 contains URCA's Order.

¹ ECS 04/2021 is available at <https://www.urbahamas.bs/consultations/ecs-04-2021-consultation-document-for-cable-bahamas-limiteds-application-for-the-repackaging-of-revtv-offers/>.

² URCA's Statement of Results and Final Decision on CBL's repackaging is available at <https://www.urbahamas.bs/wp-content/uploads/2021/07/ECS-CBL-Repackaging-SOR-Final-Decision.pdf>.

2. Regulatory Framework

This Section sets out the regulatory framework under which URCA has exercised its powers to issue this Final Determination and Order.

The Comms Act provides the framework for regulation and competition in the electronic communications sector ('ECS') in The Bahamas. Sections 99(1)(a) and (b) of the Comms 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 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.³

Condition 3.3 of the CBL IOL provides that 'Subject to other applicable laws and regulations of The Bahamas at the time being in force, the Licensee undertakes to comply with the Conditions of this Licence, Regulatory and Other Measures and the provisions of the Communications Act.'

A cornerstone of URCA's mandate is to promote the interests of existing and future consumers in The Bahamas in relation to the ECS. Integral to the foregoing is URCA's ability to ensure that licensees comply with their licence conditions and obligations, including other provisions of the Comms Act and regulatory measures that URCA may issue from time to time. URCA expects licensees to comply with their obligations at all times with particular emphasis placed on operators with significant market power ('SMP'). URCA assessed CBL as having SMP in the provision of pay television services.⁴ As such, URCA's position is that whenever an SMP licensee operates in contravention of its obligations, the appropriate regulatory action or measure should be taken, where necessary.

The customer quality of service standards schedule in the Consumer Protection Regulations 1.0.1 describe 'repeated loss of service' as the reoccurrence of a fault of the same nature within thirty (30) days of occurrence of the original fault on the Service Provider's network. The regulations also state that the cause of the repeated loss of service must be solely attributable to the faults on the Service Provider's network and that faults should not reoccur within thirty (30) days of repair of first incident of loss of service.

Part 6.4.4 of the Consumer Protection Regulations require:

Where possible, a Service Provider shall seek to resolve a Complaint on first contact with Consumers, including:

- (a) ensuring relevant staff are aware of the potential remedies available to resolve a Complaint;
- (b) tailoring any remedy offered to address the root cause of the Complaint and to address the individual circumstances of the Consumer where these have been advised to the Service Provider;
- (c) where the Complaints are indicative of a wider problem or issue, addressing the root cause of the problem or issue

³ Section 109(1) of the Comms Act.

⁴ ECS 14/2014 can be found at <https://www.urbahamas.bs/wp-content/uploads/2017/02/ECS-14-2014-Assessment-of-Significant-Market-Power-in-the-Electronic-Communications-Sector-in-The-Bahamas.pdf>.

Condition 6.1 of the IOL also provides that:

If URCA has reason to believe that any Licensee has failed to comply with any Condition, it may exercise all such powers and duties as are afforded to or required of it under the Communications Act or any other relevant law and may take all such action as is permitted to it under those sections against either the Named Licensee or that Notified Licensee.

3. CBL's Response to Preliminary Determination and Draft Order

In this Section, URCA summarises and comments on CBL's response to URCA's Preliminary Determination and Draft Order.

3.1 General Comments

CBL drew attention to the fact that the Preliminary Determination was based on customer complaints originating from URCA's consultation document (ECS 04/2021) yet the complaints were never presented to CBL with any degree of specificity. In CBL's view, URCA failed to provide basic information about the complaints including the account numbers, phone numbers, times, and places of the incidents. CBL also claimed that URCA never disclosed any details of its investigation and/or supporting evidence to verify the veracity of the complaints.

Although the complaints were received in feedback to a separate consultation matter, CBL asserted that URCA was not discharged from its obligation to follow its Consumer Complaints Handling Procedures (URCA 05/2018)⁵ also referred to as 'CCHP'. CBL quoted sections of the CCHP and emphasized Paragraph 3.1 which states: *where a complaint relates to a specific service provided under a signed contract with a service provider, it will be accepted only from the relevant Customer or a third party who is duly authorised by the customer to do so*. CBL also highlighted Paragraph 3.3.3 of the CCHP which states:

notwithstanding the requirement to first file a Complaint with the Service Provider, URCA will use its discretion as to whether or not to investigate complaints in the absence of such a filing. Situations that would warrant the exercise of such a discretion include. . . a significant amount of contacts about the same issue with the same Service Provider.

CBL continued that even where URCA exercises its discretion to investigate complaints in the absence of such filings, URCA should still follow the process set out in 5.2 of the CCHP.

CBL stated that without URCA's complaint handling process being followed first, URCA could not have reasonably or properly concluded that a determination was necessary. CBL considered URCA's decision to

⁵ The CCHP can be found here: https://www.urcabahamas.bs/wp-content/uploads/2018/10/Consumer-Complaints-Handling-Procedures_Final.pdf.

invoke its powers under section 99 of the Comms Act, thereby acting upon its own motion, to be premature and that the Preliminary Determination falls outside the scope of those powers.

CBL reiterated that it was fundamental for URCA to first confirm:

- the name of the Complainant/account number/phone number
- whether the Complainant was a customer of CBL or authorised representative of such customer with standing to complain
- the date and time of the particular incident
- a full description of the particular fault
- the root cause of the particular fault
- the length of time the particular fault was experienced by the Complainant
- whether the fault timeline met the threshold established by the customer quality of service standards for the purpose of establishing the relevant breach and the Complainant's entitlement to reimbursement

Without URCA first putting forward specific complaints and the individual circumstances of any consumer, CBL found it questionable how URCA investigated each specific complaint to determine:

- that the person complaining was a customer or authorised person of the customer with standing to complain
- whether each particular complaint was genuine in nature
- that the root cause of a particular customer's complaint was within CBL's control and/or not due to something the customer did or failed to do
- that CBL failed to remedy a customer's complaint within the requisite 30-day period
- that CBL is in breach of the Comms Act or its IOL
- that a fine is warranted in all of the circumstances

CBL pointed out that rather than seeking information necessary to ascertain the matters outlined above, URCA advised CBL that it was launching an investigation without any reference to any particular complaint it received. CBL claimed it was only able to provide general explanations for the type of faults, the possible root causes, steps required to resolve the faults, and the timelines for doing so. CBL was therefore confounded as to how URCA arrived at its conclusions given the lack of evidence that a proper and fulsome investigation took place.

Again, referring to what it deemed as URCA's failure to identify any particular customer (with a specific complaint along with the address and date of the incident), CBL claimed it was denied a fair and reasonable opportunity to investigate any specific complaint, ascertain the root cause, and make a proposal for resolution for/resolve that complaint pursuant to CBL's own internal complaint process, the

CCHP, and the Consumer Protection Regulations. Overall, CBL considered the process by which URCA arrived at its preliminary findings to be procedurally flawed and patently unfair to CBL.

URCA's Response/Final Determination

In reference to CBL's position that URCA should have followed the CCHP, URCA is not limited to the CCHP in order to address consumer complaints or issues with quality of service. In the circumstances, URCA was not bound by the requirements set out in 5.2 of the CCHP. In the past, URCA has made determinations without following the CCHP to address quality of service issues that impacted multiple customers including network outages and CBL's 2019 removal of TV channels. URCA considers the process of a determination to be a more time-efficient and proportionate way to address the widespread concerns relating to CBL's pay TV quality of service (while also capturing the customers who did not complain to URCA or, in this case, who did not participate in the consultation process for CBL's repackaging in the focus groups or by submitting views to URCA). For these reasons and in line with section 99 of the Comms Act, URCA deemed a determination to be necessary.

URCA was not persuaded by CBL's arguments that it was unable to provide more detailed explanations, propose a resolution, and/or resolve the issues without specific details for each individual customer. It was clear in the Final Determination on CBL's repackaging and URCA's two information requests that multiple unrelated customers were experiencing the same issues repeatedly. Based on this, the issues were widespread and indicative of deficiencies on CBL's operations. Furthermore, CBL's focus on whether the issues were widespread vs. isolated to a customer's premises is irrelevant considering that URCA's request asked for details regarding widespread issues. Also, CBL's claim that it requires specific customer details contradicts its own 31 August 2021 response to the investigation where CBL listed the actions its team was taking to address the signal quality issues with respect to the channel error messages and pixelated channels.

As noted in the Preliminary Determination, CBL did not ensure its staff was aware of the potential remedies available to resolve the complaints. Based on multiple calls to CBL's technical support, the staff contacted was not aware of the set-top box replacement initiative and/or how to resolve the channel error messages and pixelation.

Considering the above, URCA maintains that CBL failed to meet the customer quality of service standards, Part 6.4.4 of the Consumer Protection Regulations, and its commitment under Condition 3.3 of CBL's IOL to comply with regulatory measures issued by URCA.

3.2 Specific Comments on Recurring Service Issues

In CBL's view, the information it submitted to URCA during the investigation was misconstrued. This resulted in numerous unreasonable and erroneous findings with respect to CBL's alleged failure to meet the customer quality of service standards. CBL addressed each issue separately as set out below:

Channel Error Messages

CBL stated that due to URCA not providing specific details regarding the complaints received, CBL was unable to provide specific explanations regarding the channel error messages and instead provided general explanations. CBL referred to its 11 August 2021 submission to URCA where it explained that a channel error message/Error 200 message is a generic tune error which occurs when the customer's set-top box is unable to tune to the selected channel. Possible causes of a 'widespread' channel error message, meaning that a majority of CBL's pay TV customer base is impacted, would be a signal impairment at the headend, a channel outage from a service provider, or a commercial power outage. An 'isolated' incident, meaning it only impacts a small percentage of customers can be caused by a faulty set-top box, signal impairment at the customer's premises, fault to a node, or a commercial power outage.

CBL repeated that it was incumbent upon URCA to investigate each particular complaint from a customer in order to establish whether: the error message was as a result of some failure of CBL's network; the error message was experienced beyond the timelines specified in the customer quality of service standards after being reported to CBL; CBL failed to resolve the error message after being notified by the customer; and/or the error message was indeed widespread. Due to insufficient information to investigate specific complaints, CBL concluded that there was no basis for URCA's preliminary finding that CBL failed to meet the quality of service standards.

URCA's Response/Final Determination

As CBL repeated arguments made in its general comments, URCA refers to its responses to CBL set out in Section 3.1.

Daily Maintenance Outages between 2:00 a.m. – 6:00 a.m.

CBL reiterated that its daily outages between 2:00 a.m. – 6:00 a.m. from November 2020 to February 2021 were scheduled maintenance windows required to perform network upgrades in particular the Video Core Switch upgrade. CBL asserted that these scheduled outages do not amount to network faults as set out in the Consumer Protection Regulations and that CBL should be allowed to conduct work aimed for maintenance and upgrades. CBL explained that it tries to conduct these exercises at times that are least

inconvenient to the majority of the customer base. Adding that upon entering into a contractual relationship with CBL, its customers agree to the terms and conditions⁶ including the following section:

6. Quality of service:

a. Our services are provided according to regulated quality of service standards and our Customer Satisfaction Policy. . .

b. There may be occasions when the services or any one of them will not be available, for example, if we have to perform maintenance or upgrades. We will always try to give you as much notice as reasonably possible beforehand.

c. We cannot warrant that the services will be available 24/7 because force majeure events such as adverse weather conditions, or interruptions in the power supply, civil disturbances, industrial disputes, or a problem with international services that we depend on, or equipment failures may cause interruptions or delays or other difficulties in accessing your services. We are not liable for any failure of the services where it results from force majeure because events of force majeure are not within our reasonable control.

d. We will always try to make the services available as soon as possible.

e. If a service is not available for 3 days or more EXCEPT if (b) or (c) apply, then you may report the problem to customer service by phoning 677-1111 or emailing info@cablebahamas.com to determine if you are eligible for service credits.

f. If a device is not working, please see clause 3.

CBL admitted that it is obliged to notify customers of these exercises which it claims to do. CBL also pointed out that the increase in customer demand attributable to the COVID-19 pandemic led to a greater need to carry out network maintenance and upgrades to ensure customers received quality service.

URCA's Response/Final Determination

While URCA agrees that the maintenance windows do not amount to network faults, customers were not always notified over the four-month period that the planned/scheduled maintenance exercises were

⁶ CBL's terms and conditions can be found here: [General Terms and Conditions Residential Services | REV.](#)

taking place hence this was not in line with CBL’s own terms and conditions and customer satisfaction policy. The lack of communication led to further dissatisfaction and inconvenience for the customer.

Pixelated Channels

According to CBL, a ‘widespread’ pixelation issue may be caused by either a signal impairment at headend or an issue with the content provider and an ‘isolated’ pixelation issue may be caused by either a fault to a node or a fault at the customer premises. CBL repeated its previous arguments that URCA had insufficient information to conclude that the pixelation was due to a failing of CBL and that it failed to meet the customer quality of service standards. In response to URCA’s statement that the pixelation issue continues to occur up to the date of the Preliminary Determination, CBL stated that URCA failed to disclose which customers still experience this issue and whether it was reported to CBL.

URCA’s Response/Final Determination

CBL repeated previous arguments made therefore URCA refers to its responses to CBL which are set out in Section 3.1.

Legacy Set-top Boxes

[Redacted text block]

[Redacted text block]

[Redacted text block]

Further stating that URCA misconstrued the information provided by CBL during the investigation, CBL accused URCA of erroneously assuming that customers with legacy boxes automatically suffered unreliable service and will have to endure difficulties for the remaining two years until the replacement initiative is completed.

CBL emphasized that any assertion that the remaining legacy boxes in use are faulty and deliver unreliable service is inaccurate and unsubstantiated. CBL urged URCA to revisit its findings in that regard.

URCA's Response/Final Determination

Regarding CBL's statement that the terms 'legacy' and 'end of life' are not indicative of the boxes being 'faulty', URCA points out that it merely referenced CBL's 11 August 2021 spreadsheet in the line item on channel error messages where CBL stated that it aimed to ***'have all faulty/legacy set-top boxes upgraded by end of FY23'***. For the avoidance of doubt, URCA does not have the view that a legacy set-top box is automatically faulty and emphasizes that this was not expressed in the Preliminary Determination. URCA noted that CBL's 14 September 2021 response to the investigation stated that Phase 1 of the replacement programme commenced in September 2021 while CBL's response to the Preliminary Determination stated the programme began in September 2020. In either scenario, URCA still believes CBL should have started its replacement initiative earlier before the legacy set-top boxes reached their end-of-life dates and customers began experiencing issues (in the event that their issues were due to the set-top box). Regarding CBL's comments that the set-top box replacement programme was hampered by COVID-19 and the resulting supply chain issues, URCA points out that CBL did not provide any supporting documentation to demonstrate that orders were delayed or that suppliers had a shortage of boxes. Despite the lack of supporting evidence, URCA notes CBL's explanation and its expected completion date of December 2023 for the replacement initiative only based on the globally documented supply chain issues that are beyond CBL's control. For this reason, URCA revises its determination so that CBL is now required to complete its set-top box replacement programme no later than December 2023. URCA still maintains that customers should be informed of the initiative through all of CBL's available communication channels as set out in the Preliminary Determination.

Incorrect TV Guide

CBL repeated its previous explanations that the TV guide inaccuracies are due to regional discrepancies and content programmers making last minute changes which are both beyond CBL's control.

URCA's Response/Final Determination

Although it is unfortunate that customers may not receive accurate TV guide information at times, URCA accepts CBL's explanation.

3.3 CBL's Comments on URCA's Proposed Remedies

CBL considered URCA's proposed fine to be unfair, disproportionately punitive, and repugnant to the principles of due process. CBL repeated its previous arguments that URCA failed to properly investigate specific customer complaints and neglected to identify the specific root cause of any particular complaint. CBL considered the proposed 6% fine of CBL's revenue to be arbitrary and disproportionate. As such, CBL considered a fine in any amount to not be objectively justified.

In reference to URCA's justification that the proposed fine was due to 'the length of time with no resolution', CBL claimed this was double counting as the length of time was already factored into the proposed fine's application to one year's worth of revenue and the additional 10% on the basic fine for the duration of breach. Furthermore, CBL did not consider the length of time to be a sufficiently objective justification given the large amount of money involved. CBL drew a comparison to URCA's 2019 Final Determination in which CBL stated it was fined 1.5% (the correct fine amount was 1.25%) of its pay TV revenues for removing TV channels without providing customers any notice. CBL asked URCA to explain why it is now proposing a fine four times greater than that of 2019. In CBL's view, when URCA set out its 2010 guidelines on the level of fines, activities likely to attract serious fines were listed as price fixing, market share arrangements, and abuse of dominant position. CBL believes issues with quality of service are not in the same league as the aforementioned activities and urged URCA to set out in some detail the justification for the proposed fine in the interests of transparency and due process.

While CBL accepted that some customers suffered from quality of service issues, CBL believes that URCA ignored the fact that most of its customers receive satisfactory service most of the time hence there is no justification for basing a fine on all of CBL's pay TV revenues and for a period of a full year.

CBL disagreed with URCA's preliminary position to not make adjustments for mitigating circumstances and reiterated that its ability to respond to quality of service issues were constrained by the pandemic and other issues outside of CBL's control, i.e., inaccurate TV guides, blacked out channels, and a global shortage of set-top boxes. CBL stated that it cooperated fully with URCA's investigation and this should be recognised by URCA as a mitigating circumstance and should result in a reduction of the proposed fine.

In the event that URCA did conduct a thorough investigation which CBL continues to deny, CBL argued that a fine is only one form of sanction in URCA's regulatory arsenal and should not be the first option considered. Instead, CBL suggested URCA use an 'unless/until' order in the first instance. Further arguing that if a fine is warranted which CBL also denies, CBL strongly objected to any upward adjustment on the grounds that there is no legal basis and that such a use of URCA's power would not be transparent, fair, or non-discriminatory. CBL maintained that it is entitled to the certainty of the law and must be well-informed of sufficient details and considerations of any penalty, fine, or action to which it will be subjected. In CBL's view, failure to do so would be arbitrary and result in a denial of due process to CBL.

In the event that URCA has the authority to make upward adjustments which CBL also denies, CBL requested details of URCA's rationale behind the percentages; the mathematical formula used; details of the economic basis for or the rationale behind the compounded fines; and the basis of how URCA arrived at these amounts.

According to CBL, it invested \$45.1 million in network upgrades while it faced a global pandemic and declining revenues. Additionally, CBL stated it did the following:

- It installed Fibre to the Home (FTTH) infrastructure to over 5,000 households. 65% of these households are in Abaco and the HFC network was replaced with a fibre network after Hurricane Dorian.
- It made an FTTH investment within the last 3-4 years of \$5.1 million.
- During its fiscal year 2022, it invested \$40 million in the phase 1 deployment of FTTH in Nassau.
- It has already commenced a planned \$85 million investment in FTTH with the objective of improving the customer experience. CBL added that there will be little to no return on investment ('ROI') for CBL's fibre network investments.

While CBL has committed \$85 million to network upgrades, CBL explained that it had not paid dividends to shareholders for the past five years therefore a fine of this magnitude would significantly impact or detract from its ability to continue with its FTTH capital investment to upgrade its existing network. Such a consequence would not advance one of the primary objectives of the ECS Policy which is to promote investment and innovation in electronic communications networks and services, CBL argued.

As for URCA's proposed behavioural remedies, CBL confirmed that it presently maintains an outage and fault report for all customers and/or all nodes experiencing faults within its network. This report is actioned and reported internally by its Network Operations Center ('NOC'). Once an issue or fault is identified by the NOC, it is reported internally to CBL's Marketing and Customer Experience Team which in turn notifies the customer via the communication means listed in the Consumer Protection Regulations. CBL confirmed that as the set-top box replacement initiative is ongoing, proper records are kept and updated regarding its progress and this information can be made available to URCA. For the reasons detailed previously, CBL claimed it is unable to complete the replacement programme within URCA's proposed three-month deadline due to factors beyond CBL's control.

In terms of informing customers of the set-top box replacement programme, CBL still considered it appropriate to notify customers in a phased approach which allowed CBL to account for the number of set-top boxes in stock versus those in need of replacement within a particular target group. CBL further claimed that prior to the pandemic, multiple operators worldwide were carrying out similar replacement exercises and this resulted in a high demand for new devices which was further exacerbated by the pandemic and resulting supply chain issues.

CBL ended its response by urging URCA to revisit its preliminary findings to take into consideration all of the information provided by CBL in its previous submissions to URCA's investigation and its response to URCA's Preliminary Determination and Draft Order.

URCA's Response/Final Determination

URCA still holds the view that a proper investigation was carried in line with its obligations under sections 8(1), 9, 11 and 99 of the Comms Act. To ensure that the fine is proportionate to the breaches in question, URCA has reviewed the amount of the basic fine and decided to reduce the amount from 6% to 1.5% and finds that it should be applied to the monthly recurring charges for pay TV subscriptions for the year 2021. For the avoidance of doubt, the fine will not be applied to one-off charges. Having regard to the number of subscribers affected by the issues, URCA confirms that an adjustment for the gravity of breach is necessary therefore an upward adjustment of 10% of the basic fine will be added. URCA also affirms that an adjustment of 10% to the basic amount to take into account the duration of the alleged breaches is necessary. Additionally, due to CBL's lack of communication to customers regarding the scheduled outages, failure to find resolutions for widespread, longstanding issues, and the delay in developing a set-top box replacement program, URCA confirms that an adjustment for aggravating circumstances is necessary and affirms an additional upward adjustment of 5% to the basic amount. Regarding mitigating circumstances which are discussed further below, URCA did not see evidence of this. As part of its mandate under the policy objectives of the Comms Act to further the interests of consumers, URCA affirms that an upward adjustment of 10% to the basic amount of a fine is required. After calculating all of the upward adjustments, the total amount of the fine to be applied is 2.025% of CBL's monthly recurring charges for pay TV subscriptions for the year 2021.

Regarding CBL's repeated arguments that URCA failed to properly investigate specific complaints, URCA refers to its responses in Section 3.1. In reference to CBL's claim that an additional 10% on the basic fine for duration of breach was double counting, URCA disagrees. As stated previously, the error 200 messages and pixelation continue to occur up to this day meaning that some customers have experienced these issues for more than one year. For this reason, URCA considers an upward adjustment for the duration of breach to be justified.

Responding to CBL's comparison to URCA's 2019 Final Determination on CBL's removal of TV channels, URCA reminds CBL that although the 2019 fine was 1.25% after the upward adjustments were made, at the time, URCA wanted to focus more on the compensation to customers hence CBL was required to compensate all of the affected customers in addition to the fine. For the current investigation, CBL will be required to pay a fine of 2.025% of its 2021 pay TV monthly recurring charges after accounting for the stated upward adjustments. Unlike the 2019 Final Determination, CBL will not be required to compensate customers following this current Final Determination. URCA believes the focus should be on resolving the ongoing issues instead of a one-time compensation. URCA notes CBL's view about the 2010 guidelines on the level of fines and agrees with CBL's point that competition infringements are different from service quality issues however the principles and factors when determining a fine such as proportionality, non-

discrimination, duration of breach, mitigating circumstances, adjustment for policy objectives, amongst others, are the same. URCA also reminds CBL of its power to issue fines of up to 10% of a licensee's relevant turnover as set out in section 109 of the Comms Act.

Concerning mitigating circumstances, URCA does not consider that CBL has provided evidence for a downward adjustment. URCA considered the effects of the pandemic, supply chain issues, and other factors beyond CBL's control as noted in Section 3.2 by revising its findings on the inaccurate TV guide and set-top box replacement programme. URCA repeats that CBL should have commenced its set-top box replacement earlier and kept its customers informed. Regarding the blacked out channels due to restrictions placed by content providers, CBL was not found in breach for this and this was reflected in the Preliminary Determination.

In regard to CBL's claim that it has fully cooperated with URCA's investigation, URCA disagrees with this assertion due to CBL's incomplete submissions. CBL provided a Report of Tickets workbook for only the month of August 2021 instead of the requested outage or disruption reports. The Report of Tickets workbook did not provide any data on the error 200 messages but included a spreadsheet on loading error 301 messages instead. It was unclear whether these error messages are the same as CBL did not accompany the spreadsheet with descriptions or explanations. CBL did not provide any documentation to demonstrate the actions being taken or that were taken to address the issues. The maintenance report spreadsheet included dates and times of maintenance exercises that occurred during 2021 with a brief one-line summary of what the maintenance entailed however there was no explanation on which issues the exercises addressed in relation to URCA's investigation and what progress was made to resolving the issues. URCA can assume these exercises are in relation to pixelated channels due to the mentions of node splits and congestion relief but again, CBL did not provide any details or supporting evidence. These omissions are in addition to CBL not providing detailed explanations to URCA's queries.

Noting CBL's suggestion for an 'unless/until' order instead of a fine, URCA reiterates a fine is justified due to the widespread and repeated nature of the issues. It remains concerning that paying customers had to endure these issues repeatedly and some customers continue to endure them. URCA also remains concerned with CBL's failure to prioritize the resolution of the issues.

Regarding CBL's statement on being well-informed of the details and considerations of any penalty, fine, or action to which it will be subjected, URCA asserts that it has consulted with CBL on its provisional findings and provided CBL a reasonable opportunity to respond as set out in the relevant sections of the Comms Act. Similarly, URCA believes it has provided CBL with the relevant details on its rationale behind the proposed fine and any adjustments made.

URCA notes CBL's investments in network upgrades and ongoing migration from its existing hybrid fibre coaxial ('HFC') network to FTTH. URCA considers that the 2.025% fine to be applied would not detract CBL from investing in its network and/or using funds to eliminate the faults on its network. Regarding CBL's

mention of the ECS Policy objective to promote investment and innovation in electronic communications networks and services, URCA reminds CBL that it is also guided by the sector policy objective to further the interests of consumers. URCA endeavours to strike a reasonable balance between these objectives. URCA remains concerned that CBL has failed to explain what customers who still experience service issues should do in the meantime while paying a monthly bill for unreliable service. Accounting for all of these factors, URCA considers a fine is still justified but as stated earlier, the amount of the basic fine has been reduced.

Noting CBL's statement that it maintains outage and fault reports for all customers and/or all nodes experiencing faults within its network, it is unclear why the reports were not provided to URCA as requested. CBL also did not provide evidence of these reports as part of its response to the Preliminary Determination. As noted earlier, the Report of Tickets workbook that was submitted did not contain all of the information sought by URCA. As such, URCA affirms its finding that CBL should maintain outage and fault reports and make available to URCA upon request.

Regarding CBL's opposition to a public statement on the set-top box replacement initiative, URCA maintains that customers should be informed of the exercise as set out in the Preliminary Determination.

4. Final Determination

This Final Determination is issued by the Utilities Regulation and Competition Authority ('URCA') pursuant to Section 99 of the Communications Act, 2009 ('Comms Act').

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 conditions of the Licence, regulatory and other measures and the provisions of the Comms Act.

The customer quality of service standards schedule in the Consumer Protection Regulations 1.0.1 describe 'repeated loss of service' as the reoccurrence of a fault of the same nature within thirty (30) days of occurrence of the original fault on the Service Provider's network. The regulations also state that the cause of the repeated loss of service must be solely attributable to the faults on the Service Provider's network and that faults should not reoccur within thirty (30) days of repair of first incident of loss of service.

Part 6.4.4 of the Consumer Protection Regulations require:

Where possible, a Service Provider shall seek to resolve a Complaint on first contact with Consumers, including:

- (a) ensuring relevant staff are aware of the potential remedies available to resolve a Complaint;
- (b) tailoring any remedy offered to address the root cause of the Complaint and to address the individual circumstances of the Consumer where these have been advised to the Service Provider;
- (c) where the Complaints are indicative of a wider problem or issue, addressing the root cause of the problem or issue

Condition 3.3 of the CBL IOL provides that:

Subject to other applicable laws and regulations of The Bahamas at the time being in force, the Licensee undertakes to comply with the Conditions of this Licence, Regulatory And Other Measures and the provisions of the Communications Act.

Condition 6.1 of the IOL also provides that:

If URCA has reason to believe that any Licensee has failed to comply with any Condition it may exercise all such powers and duties as are afforded to or required of it under the Communications Act or any other relevant law and may take all such action as is permitted to it under those sections against either the Named Licensee or that Notified Licensee.

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 after receiving complaints about the quality of service of CBL's pay television services and observing the issues identified in those complaints, URCA launched an investigation on 20 July 2021.

NOW URCA is of the opinion that the Licensee is not compliant with the customer quality of service standards and has breached Part. 6.4.4 of the Consumer Protection Regulations and Condition 3.3 of its IOL for the following reasons:

- CBL was aware of faults on its network and prevented the faults from reoccurring within the 30 days of repair of the first incident of the loss of service.
- CBL failed to ensure that relevant staff were aware of the potential remedies available to resolve the complaints.
- As the complaints are indicative of wider problems/issues, CBL failed to address the root causes of the problems and issues.



Rupert L. Pinder
Director of Electronic Communications

5. Order

This Order is enclosed by the Utilities Regulation and Competition Authority ('URCA') pursuant to section 99 of the Communications Act, 2009 (Comms Act) that URCA proposes to issue in conjunction with the Final Determination an Order pursuant to section 95 of the Comms Act.

WHEREAS by Final Determination made on 21 November 2022, URCA has determined that Cable Bahamas Limited ('the Licensee') is not compliant with the customer quality of service standards and has breached Part. 6.4.4 of the Consumer Protection Regulations and Condition 3.3 of its IOL for the following reasons:

- CBL was aware of faults on its network and prevented the faults from reoccurring within the 30 days of repair of the first incident of the loss of service.
- CBL failed to ensure that relevant staff were aware of the potential remedies available to resolve the complaints.
- As the complaints are indicative of wider problems/issues, CBL failed to address the root causes of the problems and issues.

IT IS HEREBY ORDERED that the Licensee shall:

- (i) Maintain outage and fault reports for any issue indicative of a widespread problem with its network and make available to URCA upon request. At minimum, the report must contain a description of the problem; the cause of the problem; if the cause is not yet known, what steps are being taken to identify the cause; the number of customers and/or the areas affected; the steps taken to resolve the problem; and the date of resolution. For the avoidance of doubt, incidents where the TV service is available but consumers experience difficulties while watching due to an unclear picture or frequent interruptions should also be included.
- (ii) Provide an updated report on the number of legacy boxes to be replaced and the updated timelines for this program to be completed no later than 30 days following the issuance of this Final Determination and Order.
- (iii) Complete the replacement program as soon as practicably possible. During the timeframe, CBL must provide monthly updates to URCA on the status of the replacement initiative until it is completed.
- (iv) Advise customers of the replacement program via all of its communication platforms no later than 30 days following the issuance of the Final Determination and Order. At minimum, the

notice should explain what the program is, why it is being done, and set out the procedure for having the box replaced.

- (v) Provide customers with explanations on the widespread issues including, but not limited to, the steps being taken to resolve the issues, what options are available to customers to have their problems resolved, and a timeline for the resolutions to the issues once available. CBL must provide the communication to customers no later than 30 days following the issuance of the Final Determination for this investigation.
- (vi) Resolve the ongoing longstanding issues, i.e., channel error messages, pixelation, no longer than **three months** following the date of URCA's Final Determination and Order in this matter. During the timeframe, CBL must provide URCA with monthly updates on the status of the resolutions of these issues.
- (vii) Pay a fine under section 109 of the Comms Act in the amount 2.025% of CBL's monthly recurring pay TV charges for the year 2021 no later than thirty (30) calendar days from the issuance of this Order. When paying the fine, CBL must also accompany its payment with supporting data showing the calculation of the fine. Payment of such fine shall be as directed by URCA.

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.



Rupert L. Pinder
Director of Electronic Communications