



Guidance Note for Reductions in the Communications Licence Fee

Statement of Results and Final Decision

ECS 03/2023

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1. Introduction

In this document, the Utilities Regulation and Competition Authority (“URCA”) issues its Statement of Results and Final Decision on the Guidance Note for Reductions in the Communications Licence Fee (“Comms Licence Fee”).

URCA issued a Draft Guidance Note for consultation on 1 December 2022. That document had the following objectives:

- to set forth URCA’s understanding of the Government’s policy objectives for the reductions in the Comms Licence scheme and the resulting verification process;
- to set forth the application process for the reductions in the Comms Licence Fee;
- to set forth the principles of how URCA will conduct the verification process, including the timeline for the verification process; and
- to invite comments from stakeholders on URCA’s proposals.

The responses to the consultation were due on 30 January 2023. In addition to seeking general comments and/or views on URCA’s Draft Guidance Note, URCA’s consultation paper sought respondents’ views on two questions:

Consultation Question 1: Do you agree with the application and verification process (including any timelines) proposed by URCA? Should you disagree, please provide a detailed explanation for your views and outline tangible alternative processes.

Consultation Question 2: Do you agree with the appropriateness of the application fee? Should you disagree, please provide a detailed explanation for your view.

Two parties submitted responses to the consultation, namely:

- Bahamas Telecommunications Company Limited (“BTC”); and
- Cable Bahamas Limited (“CBL”) and Be Aliv Limited (“Aliv”).

URCA thanks both respondents for their written submissions and participation in the consultation process. For ease of reference, URCA will refer to the joint response from CBL and Aliv as CBL/Aliv for the remainder of this document.

In this document, URCA replies to the main comments it has received with the consultation responses, followed by its final position consulted on. In so doing, URCA expressly states that failure on its part to respond in this document to any issue raised by respondents does not necessarily signify agreement in whole or in part with the comment, that it has not considered the comment, or that it considers the comment unimportant or without merit.

1.1 Background to the Consultation

The Communications Act 2009 (“the Comms Act”), which came into force on 1 September 2009, sets out under Schedule 3 various provisions on the Communication Licence Fee (“the Comms Licence Fee”). Schedule 3 of the Comms Act mandates every Licensee that is required to pay an URCA Fee to also pay an annual fee equal to three percent (3%) of the Licensee’s Relevant Turnover as the Comms Licence Fee. The Minister for the Electronic Communications Sector (ECS) in The Bahamas is also empowered under Schedule 3 to amend by Order or Regulation Schedule 3 to provide for the payment of a Comms Licence Fee equal to a different percentage, which may be greater or lesser than the specified 3% of the Licensee’s Relevant Turnover.

On 25 May 2022, the Minister in exercise of his powers pursuant to Schedule 3 has, by Order, established that Licensees would be able to receive reductions in their Comms Licence Fee subject to certain policy objectives of the Government. In particular, the Order stated that:

(a) “by the insertion immediately before the word “Every” of the words “(1)”;

(b) by the insertion immediately after subparagraph (1), of the following new subparagraph –

(2) Notwithstanding subparagraph (1), where a licensee can demonstrate to URCA that the licensee has made an investment of not less than one hundred thousand dollars, in emerging technologies anywhere in The Bahamas, the communication license fee payable under subparagraph (1) shall be reduced by the lower investment amount or: -

(a) 0.75 per cent of relevant turnover in the first year following the year in which investment was made;

(b) 1.5 per cent of relevant turnover for every year thereafter”.

URCA has been given the responsibility under the Order to verify and determine whether a Licensee qualifies for a reduction in the Comms Licence Fee. The verification and determination process by URCA must be based on the policy objectives of the Government of The Bahamas (“the Government”). Given this, URCA has developed a Guidance Note to inform Licensees on how to apply for such reductions in the Comms Licence Fee and to inform Licensees on the approach URCA expects to take when conducting the verification process.

1.2 Legal framework

This section sets out the legal framework that governs URCA’s power to conduct this consultation process and to issue the proposed Guidance Note.

1.2.2 The Communications Act, 2009

Section 4 of the Comms Act provides, inter alia, that the electronic communications policy has as one of its main objectives, to further the interest of persons in The Bahamas in relation to the ECS by promoting affordable access to high quality networks and carriage services in all regions of The Bahamas.

Section 5 of the Comms Act provides that all regulatory measures shall be made with a view to implementing the electronic communications policy objectives. Regulatory measures, inter alia, should be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory.

Section 11 of the Comms Act requires URCA to allow persons with sufficient interest a reasonable opportunity to comment on a proposed regulatory measure which, in the opinion of URCA: (i) is of public significance; or (ii) whose rights or interests may be materially adversely affected or prejudiced by the proposed regulatory measure. URCA must also give due consideration to those comments prior to introducing the regulatory measure.

Section 13 of the Comms Act establishes that a regulatory measure is likely to be of public significance if it relates to a regulated sector and can lead to: (i) a major change in the activities carried on by URCA under the Comms Act; (ii) a significant impact on persons carrying on activities in a regulated sector; and/or (iii) significant impact on the general public in The Bahamas.

URCA considers that the proposed Guidance Note will be a regulatory measure of public significance as it will have a significant impact on Licensees carrying out activities in the ECS. As such, the consultation provided an opportunity for members of the public, Licensees, and other interested parties to submit written comments to URCA.

1.3 Structure of the Remainder of this Document

The remainder of the document is structured in the following way:

- Section 2 summarises the responses received to URCA's consultation questions and URCA's final decision on each, having taken into consideration of the consultation responses.

The Final Guidance Note is published in a standalone document on URCA's website: www.urbahamas.bs.

2. Responses to Consultation Questions

In this Section, URCA summarises and responds to the comments received during the public consultation process, focusing on the comments made on the issues under consultation.

In order that this document provides a useful and succinct assessment of the respondents' views provided throughout the consultation process, URCA only discusses in this section those responses which provide further material for discussion and/or clarification. Where the respondents have within their responses referred to topics that are outside of the scope of this scheme, URCA has not provided a lengthy summary of those statements along with the reasons they do not merit further discussion.

URCA notes that CBL/Aliv provided their comments in relation to a number of other issues. These include the taxation levels of the sector, the Government's vendor selection policy and the need for more Government support for network rollout in rural locations. Given that these views relate to policies that are outside of the scope of this Comm Licence Fee reduction scheme, URCA has not responded to these comments within rest of this document.

2.1 General Comments

Both BTC and CBL/Aliv provided general comments as part of their responses. URCA addresses BTC's comments in relation to its section on the "*Licence fee reduction formula*".

BTC's comments

As part of its response, BTC considered that the wording of the Order was unclear in relation to how the reduction of 0.75% or 1.5% is applied to the Comms Licence Fee. However, BTC accepted URCA's interpretation that the 1.5% is applied in all Years for which a reduction was approved and applied in the previous Year.

CBL/Aliv's comments

CBL also requested more clarification on the wording of the Order. In particular:

- CBL requested clarification whether the clause in line 4 of the Order should read "*the lower of the investment amount or*";
- CBL requested confirmation on how the reduction of 0.75% or 1.5% will apply to the Comms Licence Fee after making a Qualifying Investment. CBL is of the opinion that the Order specifies that a single Investment of no less than B\$100,000 will be rewarded with a reduction of 0.75% in the Application Year and a 1.5% reduction in the following Years. In other words, the Applicant does not need to make consecutive Investments in order to benefit from the 1.5% reduction.

URCA's responses to comments received

URCA notes BTC's and CBL/Aliv's queries on the wording of the Order. URCA confirms that its interpretation of the Order, as presented in the Consultation Document, is correct, as URCA had exchanges with the Minister of Finance on the interpretation of this Order in advance of the consultation.

URCA also notes CBL/Aliv's request for clarification that the Order should refer to the lower of the Investment amount. URCA confirms that CBL/Aliv's understanding is correct.

URCA's Final Decision

URCA confirms that an Applicant will only be considered for a reduction of the lower of the Investment amount or 1.5% of the Relevant Turnover if the Licensee was awarded a reduction in the Comms Licence Fee in the previous Year. In all other cases, the 0.75% reduction would apply.

URCA further confirms that the Order refers to the lower of the Investment amount or the specified 0.75% or 1.5% reduction in the Relevant Turnover.

2.2 Comments on the Application Process

Q1. Do you agree with the application and verification process (including any timelines) proposed by URCA? Should you disagree, please provide a detailed explanation for your views and outline tangible alternative processes.

Both BTC and CBL/Aliv provided comments on this consultation question. URCA will address all of BTC's responses to the Consultation Document with the exception of BTC's comments on the sections regarding the "*application fee*" and "*Licence fee reduction formula*".¹

BTC's comments

As part of its response, BTC argued that the Draft Guidance Note failed to provide a specific criterion for defining Qualifying Investments. BTC supported this by arguing that the definition included several unnecessary statements (e.g. referencing Family Islands) and is not consistent with the Order. BTC further stated that the definition failed to refer to new network Investments. Given this, BTC suggested that a single definition of Qualifying Investments upfront could be "*any Capital Expenditure of at least one hundred thousand dollars on new technologies/services and/or extending the geographic coverage of existing network/services (inclusive of upgrades) anywhere in The Bahamas.*"

Further, BTC argued that the inclusion of the verification stage is inconsistent with the Order as it adds unnecessary complication and delays to the overall process. To support this view, BTC considered that the trigger for rewarding the reduction in the Comms Licence Fee was when the Licensee has "***made an investment of not less than one hundred thousand dollars, in emerging technologies anywhere in The Bahamas***" (emphasis added). As such, BTC considered that the application and assessment stages are fully sufficient for the purposes of the Order – in other words, BTC considered that the verification stage and

¹ URCA responds to BTC's comments on the "*application fee*" in Section 2.3 below and "*Licence fee reduction formula*" in section 2.1 above.

the request for Licensees to submit information to support verification in the application form (i.e. item 4 in the Draft Guidance Note) should be eliminated.

BTC considered that if URCA decides to maintain this stage, URCA should split this stage into a “*Verification Application Stage*” and “*Verification Assessment Stage*” in order to provide more clarity on the process and timings for the Applicants. As part of this, it further stated that URCA should include a clear justification for why the verification stage is required and provide clearer guidance, in a second annex, on what information should be submitted to facilitate the verification process. BTC further requested that, if URCA chooses to rely on external information to verify an application, URCA should share that information with the relevant Applicant.

BTC agreed that the launch of this scheme should be between May 2022 and April 2023. However, BTC considered that there should not be a deadline for an application in any particular Year. For example, a Licensee should be allowed to file an application for Year 0 in Year 0 or in early Year 1.

Finally, BTC strongly recommended URCA to outline the appeal process in more detail in order to provide transparency and recourse to the Licensees.

CBL/Aliv’s comments

CBL/Aliv did not agree with the application and verification process that was proposed in the Draft Guidance Note. As such, it suggested several changes to the overall process.

Firstly, CBL/Aliv considered that the key concepts of “*Underserved Areas*” and “*emerging technologies*” should be defined within the Guidance Note. In particular, for “*Underserved Areas*”, CBL/Aliv stated that it may be better to refer to “*uneconomic customers*” as these represent locations where the revenue to serve these customers are lower than the costs to deploy a network. CBL/Aliv further suggested alternative wording for both “*Underserved Areas*” (if URCA were to retain this term) and “*uneconomic customers*”, and these are:

- “*An Underserved Area is a geographic area of The Bahamas where the range and/or quality of electronic communications services are less than those available in other areas of The Bahamas due to economic or technical limitations*”
- “*An uneconomic customer is one whose expenditure on electronic communications services with an operator is less than the costs to the operator of providing those services*”

Secondly, CBL/Aliv suggested for URCA to only ask for proof of expenditure at the verification stage rather than the application stage. CBL considered that this should be sufficient for URCA to assess and verify an application against the conditions for the Qualifying Investment.

Thirdly, CBL/Aliv requested clarification on the start date of the assessment stage and to which Year the reduction in the Comms Licence Fee will apply in case of a successful application.

Fourthly, CBL/Aliv recommended that the verification stage should allow some leeway for URCA to consider any legitimate and naturally occurring changes in the Investment program during its

implementation. For example, this could relate to changes due to “*unanticipated operational circumstances*”.

Fifthly, CBL/Aliv recommended that URCA should allow Licensees that are successful in an application to apply for further reductions in the Comms Licence Fee within the same Year.

URCA’s responses to comments received and final position

Given the range of responses that were provided by BTC and CBL/Aliv to this question, URCA has categorised these responses into sections and responds to each section in turn below.

Definition of Qualifying Investment

URCA notes BTC’s concerns in relation to the definition of Qualifying Investments and thanks BTC for providing an alternative definition for this term. URCA considers that its definition, as set out in the Consultation Document, is appropriate and consistent with the Order. In particular:

- URCA considers that its definition of Qualifying Investment is consistent with the Order as URCA has confirmed this definition with the Minister of Finance before drafting the consultation document.
- URCA considers that providing improved connectivity to the Family Islands is an important condition as it is consistent with the Government’s policy objective of improving connectivity to all locations in The Bahamas. This is especially the case as a non-trivial proportion of these locations are currently un-served by the existing telecommunication networks. This means that URCA will consider Investments that improve connectivity (including the deployment of additional transmission capacity) to the Family Islands so long as the Applicant is able to clearly link this to delivering new technologies or extending the existing network coverage. However, URCA intends to make this condition clearer and will update this criterion to: “*Investments that extend service/network coverage (including delivering additional transmission capacity) to particular geographic locations (Family Islands, etc.) which are uneconomic to serve*”.
- URCA notes that its definition of Qualifying Investment does refer to new technologies as Condition 1 refers to “*Investments that extend the geographic availability of **new electronic communication services** anywhere in The Bahamas*” (emphasis added).

Given the discussion above, URCA considers that its definition of Qualifying Investment is clear. As such, URCA intends to retain its definition in Section 6.1 subject to further changes discussed below.

URCA notes CBL/Aliv’s concerns in relation to the definition of “*emerging technologies*” and “*Underserved Areas*”, and thanks CBL for offering alternative definitions for “*Underserved Areas*”. URCA’s responses are the following:

- URCA considers that the existing definition of “*emerging technologies*” within the Guidance Note is sufficient as it refers to the deployment of new technologies in any part of The Bahamas or the extension of existing technologies within The Bahamas. URCA also notes that providing a more prescriptive list of new technologies would make it difficult for URCA to account for any new technologies that may be developed in the future, and it would also be against the principle of the technology neutral approach to the regulation of the ECS in The Bahamas.
- URCA acknowledges the concern in relation to “*Underserved Areas*” and considers it is more appropriate to expressly link its definition of Underserved Areas to those set out in the Universal Service Framework as this provides a clearer nexus to those areas that would benefit from the additional Investment. However, URCA notes that the current Universal Service Framework is due to be reviewed and therefore an interim solution is required. Given this, URCA considers that a suitable interim approach would be to define these “*Underserved Areas*” as those locations that are currently not served by the relevant Applicant’s existing network and to then link this definition to the Universal Service Framework once this has been finalised (including any future amendments to this framework over time). As such, URCA will include a definition of “*Underserved Areas*” to be: “*any location that is consistent with the definition of Underserved Areas within the Universal Service Framework*” and include an explanation that this, for now, covers all locations that are not served by the Applicant’s existing network until the upcoming review of the Universal Service Framework is completed.

URCA further notes CBL/Aliv’s suggestion to replace “*Underserved Areas*” with “*uneconomic consumers*” and thanks CBL/Aliv for providing a definition for “*uneconomic consumers*”. URCA emphasizes that the intended objective of this Order is to further the interests of consumers by supporting the rollout of new technologies and the expansion of existing networks to underserved locations. This policy objective has been confirmed by the Minister. To support this objective, URCA considers it appropriate to focus on geographic areas as this is more consistent with how Licensees will conduct their Investment and it also enables Licensees to better describe (and for URCA to verify) the outcomes of these Investments. In addition, URCA considers that the usage of “*Underserved Areas*” is more closely aligned with the definitions within the Universal Service Framework. Given this, URCA intends to retain the use of “*Underserved Areas*”.

URCA welcomes CBL/Aliv’s comments on the need to improve outcomes for consumers, especially those consumers that require additional support due to lower income and/or disabilities. URCA reassures CBL/Aliv that this is an important consideration and will be considered in other initiatives (for example, within the accessibility dimension of universal services). As such, URCA will not provide a more detailed response in this document.

URCA's Final Position

Having considered the consultation responses received in relation to the defined term of Qualifying Investment, URCA will adjust the conditions for Qualifying Investment in section 6.1 to the following:

1. Investments that extend the geographic availability of new electronic communications services anywhere in The Bahamas;
2. Investments that extend service/network coverage in currently Underserved Areas; and/or
3. Investments that extend service/network coverage **(including delivering additional transmission capacity)** ~~in currently underserved areas and/or to~~ particular geographic locations ~~only~~ (Family Islands, etc.) which are uneconomic to serve.

URCA will also include a definition for "*Underserved Areas*" as being "*any location that is consistent with the definition of Underserved Areas within the Universal Service Framework*" and include an explanation that this will refer to any locations that are beyond the reach of the existing network of the Applicants until the Universal Service Framework (and all subsequent amendments) has been finalised.

Verification Stage

URCA notes, but respectively disagrees with BTC's view that the introduction of the verification stage is inconsistent with the Order and should be removed from the overall process. URCA emphasises that a key policy objective of the Comms Act is to further the interest of consumers in the Bahamas. As such, URCA considers it necessary to implement the verification stage as it will allow URCA to verify whether the Investment that the Applicant has made in the Application Year **has led to outcomes that are beneficial to consumers in the following Year** (emphasis added).

URCA disagrees with BTC that the verification stage will lead to unnecessary delays. URCA emphasises that, according to the Order, a successful Applicant will only be rewarded with a reduction in its Comms Licence Fee in the following Year. Given this, URCA considers that the inclusion of a Verification Stage will not necessarily delay the conclusion of the process since this stage will be conducted at the end of the following Year. URCA reminds BTC that the Applicants can also help to prevent any unnecessary delays by duly co-operating in terms of submitting applications that are clear, complete and on time, responding to any request for information and/or clarification needs from URCA in a co-operative manner and submitting information that is clear and easy to verify for URCA.

URCA further notes BTC's recommendation that, if a verification stage is retained within the overall process, it should be split into two separate stages. URCA does not consider there to be any merits in splitting this stage further as URCA wants to ensure that the overall process is as straightforward as possible. URCA does however acknowledge BTC's other concerns and will make the justification for the

verification stage to be clearer and provide some more high-level guidance in a separate Annex on the information that should be submitted on outcomes at the application and verification stage.²

URCA notes CBL/Aliv's recommendation to only ask for proof of expenditure at the verification stage and to provide Applicants with some leeway at this stage to account for any legitimate changes to the Investment program after the application has been submitted. URCA agrees with these recommendations. URCA will accept proof of expenditure at the verification stage (if this is not available at the application stage) but URCA emphasises that it will only accept any proof of expenditure that applies to any Investments in the Application Year. URCA will also only accept legitimate changes to the Investment program if the Applicant provides sufficient information to demonstrate that this is case.

URCA's Final Position

Having considered the consultation responses received in relation to the verification stage, URCA will retain the verification stage as part of the overall process but will provide more high-level guidance on the need for this stage and the information that is required from Applicants. URCA will also update the Guidance Note to take into account legitimate changes in the Investment plan and allow Applicants to supply proof of expenditure at the verification stage (if this is not available at the application stage).

Other comments

URCA notes BTC's recommendation that there should not be a deadline for an application in any particular Year. URCA does not agree with this recommendation and considers that it is important to have the deadline of 30th April (i.e. end of the Year) stated in the Draft Guidance Note as it enables URCA to separate Investments between the Application Year and the subsequent Year. This will determine whether the 0.75% is rewarded for an initial application or 1.5% is rewarded for a consecutive application.

URCA welcomes BTC's intention to conduct multi-Year Investments and notes BTC's intention to apply for a reduction in the Comms Licence Fee on an annual basis. URCA however encourages BTC and any other Applicant to submit applications based on Investments in the Application Year and to further provide information on outcomes in the following Year for the verification stage. For the avoidance of doubt, URCA will not consider any planned Investment over multiple Years (beyond the Application Year) as part of the Qualifying Investment.

For example, an Applicant can submit an Investment plan that sets out Investments over a five Year period. However, to assess any reduction in the Comms Licence Fee in the Application Year, URCA will only assess the actual Investment made by the Applicant in the Application Year and the outcomes delivered based on this Investment in the following Year. **URCA therefore encourages Applicants to**

² Given the specific nature of Investment plans, URCA will not be able to offer detailed exhaustive guidance on the information that needs to be provided at this stage.

identify those investments and the intended outcomes of such investments clearly in their application to avoid any clarification needs and delays in the assessment and verification stages (emphasis added). Further, any remaining Investments within that Investment plan can then form part of applications, if the Licensee wishes to apply for a reduction in its Comms Licence Fee, in subsequent Years.

URCA notes BTC's suggestion to outline the appeal process in more detail. However, URCA notes that BTC did not provide any further explanation on what areas and/or aspects of the process it would like further clarification on. Given this, and the fact that the appeals process is a standard process applicable to here as to other regulatory decisions, URCA considers that the existing guidance is sufficient.

URCA notes CBL/Aliv's request for a clarification on the start date of the assessment stage and clarification on which Year the reduction will apply after a successful application. URCA confirms that it will communicate the outcome of the assessment stage within twenty (20) working days after URCA acknowledges receipt of the application. URCA also confirms that the reduction will apply to the Comms Licence Fee that is paid by the Applicant in the following Year after a successful application. For the avoidance of doubt, a successful Applicant that applied in Year 0 will be provided with a reduction in the Comms Licence Fee that it pays in Year 1. URCA will make both clarifications clearer in the Final Guidance Note.

URCA further notes CBL/Aliv's recommendation to allow successful Applicants to apply for further reductions within the same Year. URCA reiterates that it will only reward a successful Applicant with a reduction in Comms Licence Fee once in any particular Year.

URCA's Final Determination

Having considered the consultation responses received in relation to this section, URCA confirms that:

- The deadline for an application is the end of the Year.
- The assessment stage will start from the date that URCA acknowledges receipt of an Application.
- Any reduction will be applied to the Comms Licence Fee in the following Year after a successful application.
- URCA will only reward a successful application with a reduction in the Comms Licence Fee once in any particular Year.

URCA will further make it clear in the Final Guidance Note that it will only consider Investments made during the Application Year. URCA will also retain the existing reference to the appeal process.

2.3 Comments on the Application Fee

Q2. Do you agree with the appropriateness of the application fee? Should you disagree, please provide a detailed explanation for your view.

Both BTC and CBL/Aliv provided comments on this consultation question. For BTC, URCA addresses BTC's comments in relation to its section on the "*Application Fee*".

BTC's comments

BTC accepted that an application fee may be warranted for URCA to administer this process. However, BTC considered that the fee should be nominal.

CBL/Aliv's comments

CBL/Aliv did not agree with the introduction of an application fee as it considered that this is not consistent with the Government's objectives. In particular, CBL/Aliv believed that the introduction of the application fee may deter potential applications and reduce the funding that is available for Investment purposes.

URCA's responses to comments received and final position

URCA notes that BTC has accepted that the application fee should be nominal while CBL/Aliv did not agree with the imposition of an application fee. As per Section 92 of the Comms Act, URCA emphasizes that it has the right to charge a fee for particular services rendered in the performance of its functions. URCA also reassures CBL/Aliv and BTC that the application fee will be nominal and should, therefore, not affect any application. Given this, URCA considers it appropriate to impose an application fee to reflect the additional resources that will be required for URCA to administer each application.

URCA's Final Position

Having considered the consultation responses received in relation to the application fee, URCA will retain the application fee.