



Guidance Note for Reductions in the Communications Licence Fee

ECS 04/2023

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1. Introduction

1.1 Purpose of this Guidance Note

This Guidance Note provides procedural and substantive guidance for Licensees on the reduction in the Comms Licence Fee under the Communications Act (Amendment to Schedule 3) Order, 2022 (“the Order”). This includes guidance on:

- URCA’s understanding of the Government’s policy objectives for the reduction in the Comms Licence scheme and the resulting verification process;
- The application process for the reduction in the Comms Licence Fee; and
- The principles of how URCA will conduct the verification processes, including the timeline for the verification process.

This Guidance Note seeks to provide clarity and transparency for Licensees to ensure that they are in a position to benefit from the Order.

Licensees are required to submit an application form, including supporting evidence, that is clear, complete and compliant with this Guidance Note. URCA will not be held responsible for rejecting any incomplete or unclear applications.

Whilst it is anticipated that URCA will follow the principles and approach outlined in this Guidance Note, URCA reserves the right to consider other factors not listed in the Guidance Note when necessary. Where URCA decides to depart from this Guidance Note, URCA will provide reasons for doing so.

It is URCA’s intention to review the Guidance Note from time to time in order to ensure it is in line with the Government’s policy objectives for the ECS and changing market circumstances.

2. Definitions and Interpretations

For the purposes of this Guidance Note, except in so far as the context otherwise requires, the following definitions will apply:

“Applicant” means a Licensee that is applying for the reduction in the Comms Licence Fee;

“Application Year” means the year in which the Applicant is submitting an application to URCA for a reduction in the Comms Licence Fee;

“Capital Expenditure” means the expenditure to acquire, upgrade and maintain physical assets required to deliver electronic communications services in The Bahamas. This does not include any ongoing costs that Licensees will incur on a regular basis to keep the business operational (i.e., operational expenditure) or cost of sales related expenditures;

“Comms Act” means the Communications Act, 2009;

“Comms Licence Fee” means the Communications Licence Fee, as mandated under Schedule 3 of the Comms Act;

“ECS” means the Electronic Communications Sector of The Bahamas;

“Government” means the Government of The Bahamas;

“Investment” means the Capital Expenditure of the Licensee;

“Licensee” means any of the following:

- (a) the holder of an Individual Operating Licence;
- (b) a company notified to URCA under Section 21 of the Comms Act as being a subsidiary undertaking of a Licensee with an Individual Operating Licence; or
- (c) the holder of a Class Operating Licence Requiring Registration;

“Qualifying Investment” means any Capital Expenditure that meets the criteria for the reduction in the Comms Licence Fee in Section 6.1 of this Guidance Note;

“Relevant Turnover” means the gross receipts in money or money’s worth of the Licensee that is attributable to:

- (i) the provision of a network or carriage service or use of any radio spectrum under any licence or exemption determination; and
- (ii) a content service, including any associated advertising revenue and other ancillary revenue, but after the deduction of sales rebates in The Bahamas during the relevant financial year.

“URCA” means the Utilities Regulation and Competition Authority as established under Section 3 of the Utilities Regulation and Competition Authority Act, 2009 (URCA Act);

“Underserved Area” means any location that is consistent with the definition of Underserved Areas within the Universal Service Framework; and

“Year” means the period that starts on 1st May and ends on 30th April of the following Year.

For the purpose of interpreting this Guidance Note, except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in:

- (i) this Guidance Note, and otherwise;
- (ii) the Communications Act, 2009, and otherwise
- (iii) the URCA Act, 2009, and otherwise;
- (iv) the Universal Service Framework.

For ease of reference, in this Guidance Note, terms defined herein have been capitalised;

Where there is any conflict between the provisions of this Guidance Note and the Communications Act, the provisions of the Communications Act shall prevail;

Headings and titles used in this Guidance Note are for reference only and shall not affect its interpretation or construction;

References to any law or statutory instrument include any amendments, modification re-enactment or legislative provisions thereto or substituted for the same;

Use of the word “include” or “including” is to be construed as being without limitation;

Expressions cognate with those referred to in this Guidance Note shall be construed accordingly;

Words importing: (i) the singular only shall include the plural and vice versa; and (ii) the whole shall be treated as including a reference to any part; and

Reference to persons shall include firms or companies.

3. Overarching Government Policy Objectives

The Government considers that access to electronic communication services is key to the socio-economic development of The Bahamas. This is highlighted by the policy objectives of the Comms Act which focused on improving the interests of consumers by encouraging investment and innovation in electronic communication services, promoting sustainable competition within the ECS and enhancing the productivity of the economy among other objectives.¹

The Government further publishes an ECS Policy every three (3) years which outlines the broad strategic aims of the Government within this sector. The current ECS Policy 2020 – 2023 further confirms the importance of electronic communication services by including the aim of “ensuring that people and businesses in all parts of The Bahamas can access a broad range of high quality electronic services” among others.²

Given these policy objectives, the Government has amended Schedule 3 of the Comms Act in order to incentivize an increase in the deployment of electronic communication services, both in terms of extending geographic coverage of existing services across the country as well as facilitating the launch of new services across The Bahamas. This amendment is also designed to reward those Licensees that increase and/or consecutively increase access to electronic communication services (subject to certain conditions) with a reduction to their Comms Licence Fee.

4. Legal Background of the Comms Act Amendment, 2022

Schedule 3 of the Comms Act sets out the provisions in relation to the Comms Licence Fee. Paragraph 1 of Schedule 3 states that:

“Every person required to pay an URCA fee pursuant to section 92(1)(c) shall, before commencing the establishment, maintenance or operation of a network or provision of a carriage service authorised by its licence and on or before 30th April in each subsequent year, pay an annual fee (the “communications licence fee”) equal to three percent of the licensee's relevant turnover.”

To assist URCA with verifying the Comms Licence Fees, the Schedule further provides that the Licensees must supply evidence for verification purposes.

Schedule 3 further includes provisions that allow the relevant Minister to amend the existing provisions within Schedule 3 such that the new Comms Licence Fee is “equal to a different percentage (which may be greater or lesser than that specified in paragraph (1) of the licensee's relevant turnover; or subject to a minimum payment”.

¹ <https://www.urbahamas.bs/wp-content/uploads/2016/08/The-Communications-Act-2009-.pdf>

² <https://www.urbahamas.bs/wp-content/uploads/2020/06/ECS-POLICY-2020-2023.pdf>

On 25 May 2022, the Minister invoked this provision to amend Schedule 3 of the Comms Act³ by introducing the following:

- (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”.*

5. Procedural Guidance on the Reduction in the Comms Licence Fee

This section sets out the overall procedure of the verification process for the reduction in the Comms Licence Fee. This process involves three (3) stages:

- (i) Application Stage;
- (ii) Assessment Stage; and
- (iii) Verification Stage.

Each process stage is discussed below in greater detail in sections 5.1, 5.2 and 5.3, respectively.

5.1 Application Stage

As per the amendment to the Comms Act, a Licensee is eligible to apply for a reduction if it can demonstrate to URCA that it has invested at least one hundred thousand dollars (B\$100,000) in emerging technologies anywhere in The Bahamas.⁴

A Licensee that wishes to apply for the reduction in the Comms Licence Fee (“the Applicant”) in any Year must complete and submit to URCA the **application form set out in Annex A** of this

³ <http://www.govnet.bs/wps/wcm/connect/d476d4fd-ddde-4b5f-b2ea-e1ba33ae1f73/COMMUNICATIONS+ACT+%28AMENDMENT+TO+SCHEDULE+3%29+ORDER+2022.pdf?MOD=AJPERES>

⁴ Note that the reduction in Comms Licence Fee does not apply to persons who operate under a Comms Act exemption.

Guidance Note, and **pay the Communications Licence Fee Reduction application fee** that is set out in URCA's Fee Schedule. As part of the application form, Applicants are asked to provide the following:

1. Details of the Applicant (e.g., name and contact details);
2. Description of the Investment (including the financial value of the Investment in the Application Year);
3. Written explanation of why this Investment satisfies any of the three conditions for being considered a Qualifying Investment in Section 6.1 of this Guidance Note;
4. Description of the intended outcomes of the Investment for the following Year (see Annex B for more information); and
5. Any other information that supports the application.

Consistent with Schedule 3 of the Comms Act, all Applicants must provide **supporting documents** alongside their application form. These include the following:

1. Proof of payment of the application fee (if available);
2. A breakdown of the expenditure into different cost items/categories (if possible) with a description of each cost/category and how each cost/category is linked to the intended outcomes of the Investment;
3. Any other documents that support the application.

Applicants can provide proof of expenditure on the Qualifying Investment at the Verification Stage, if this is not available at the Application Stage. This proof should include any invoices or contracts that clearly show payment for each of the above items/categories within the Application Year.

Applicants should only submit information based on the Investments they have made or intend to make in the Application Year and provide information on outcomes that can be verified in the following Year. 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.

A Licensee may submit the application form and supporting information to URCA in electronic format via email, to info@urcabahamas.bs or by hand to URCA's office situated at Frederick House, Frederick Street, New Providence. All information that is submitted must be clear, transparent and complete. Any data that is submitted must be provided in editable Excel files.

URCA will acknowledge receipt of the application within five (5) working days. URCA reserves the right to automatically reject any application with missing proof of payment of the application fee and/or no supporting evidence.

5.2 Assessment Stage

Once URCA has acknowledged receipt of the application, URCA will conduct a detailed

assessment of any complete application based on the approach outlined in Section 5.2.1, and 5.2.2 below. URCA will seek to complete this assessment and inform the Applicant within twenty (20) working days after URCA acknowledges receipt of the application.

URCA will only be able to conduct its assessment based on information provided by the Applicants. This means that Applicants should provide clear and complete information that allows URCA to identify the incremental improvements to their network, the timing of this Investment and the intended outcome of the Investment.

URCA will contact the Applicant where further information and/or clarification on its application is needed. In such circumstances, **URCA will pause the overall timetable and will only resume once all clarification needs are satisfied.**

5.2.1 Assessment of alignment with Government objectives

URCA will first assess the application form and supporting information to determine which parts of the Investment satisfies any of the three conditions for being considered a Qualifying Investment that are outlined in Section 6.1 below. In particular, URCA will verify whether the purpose of the Investment is to offer new technologies/services within The Bahamas and/or extend the geographic coverage of existing network/services.

5.2.2 Financial assessment

After determining which parts of the Investment is relevant to this scheme, URCA will then determine whether the stated Capital Expenditure on the network or service expansion during the Application Year meets or exceeds the B\$100,000 threshold. URCA will disregard those Capital Expenditure that are outside of the Application Year under consideration and/or do not satisfy the conditions for being considered a Qualifying Investment.

5.2.3 Assessment decision

Where URCA determines that the Applicant has passed both assessments above, URCA will notify the Applicant of its decision and will issue the Licensee a **Notice of Approval**. URCA will subsequently confirm the level of the reduction and how this reduction will be applied to the Applicant's Comms Licence Fees.

Where URCA determines that the information is not sufficient to pass one or both of the assessments above, URCA will notify the Applicant of its decision and will issue the Licensee a **Notice of Rejection**, providing reasons for such rejection.

For the avoidance of doubt, in the event that URCA determines that the application does not satisfy either or both of the criteria above, URCA will not refund the application fee to the Applicant and URCA will treat any subsequent application by the Applicant as a new application (i.e., the Applicant has to submit a new application form and application fee).

5.3 Verification Stage

One of the key policy objectives of the Comms Act is to further the interest of consumers in The Bahamas and, in particular, to promote investment and innovation in electronic communications networks and services. Given this, URCA considers it important to verify whether the intended outcome of the Investment has been achieved before applying the reduction to the Comms Licence Fee in the following Year. This will ensure that the scheme and the outcome of any Qualifying Investment benefits consumers in The Bahamas.

Given this, an Applicant that has successfully passed the assessment must provide additional supporting documents three (3) months before the end of the following Year that demonstrates that it has delivered on the outcomes it has committed to within its application. Applicants can also attach this information to any consecutive applications in the following Year if this is submitted three (3) months before the end of the following Year.

If the Applicant did not provide proof of expenditure on the Qualifying Investment at the Application Stage, then the Applicant must provide this at the Verification Stage. It should be noted that URCA will only count those Investments that are actually incurred by the Applicant in the Application Year.

URCA will use the supporting information to verify whether the outcome has been achieved. As part of this process, URCA may check the submitted information against its own published reports and/or conduct its own-initiative investigation on whether the outcome has been achieved.

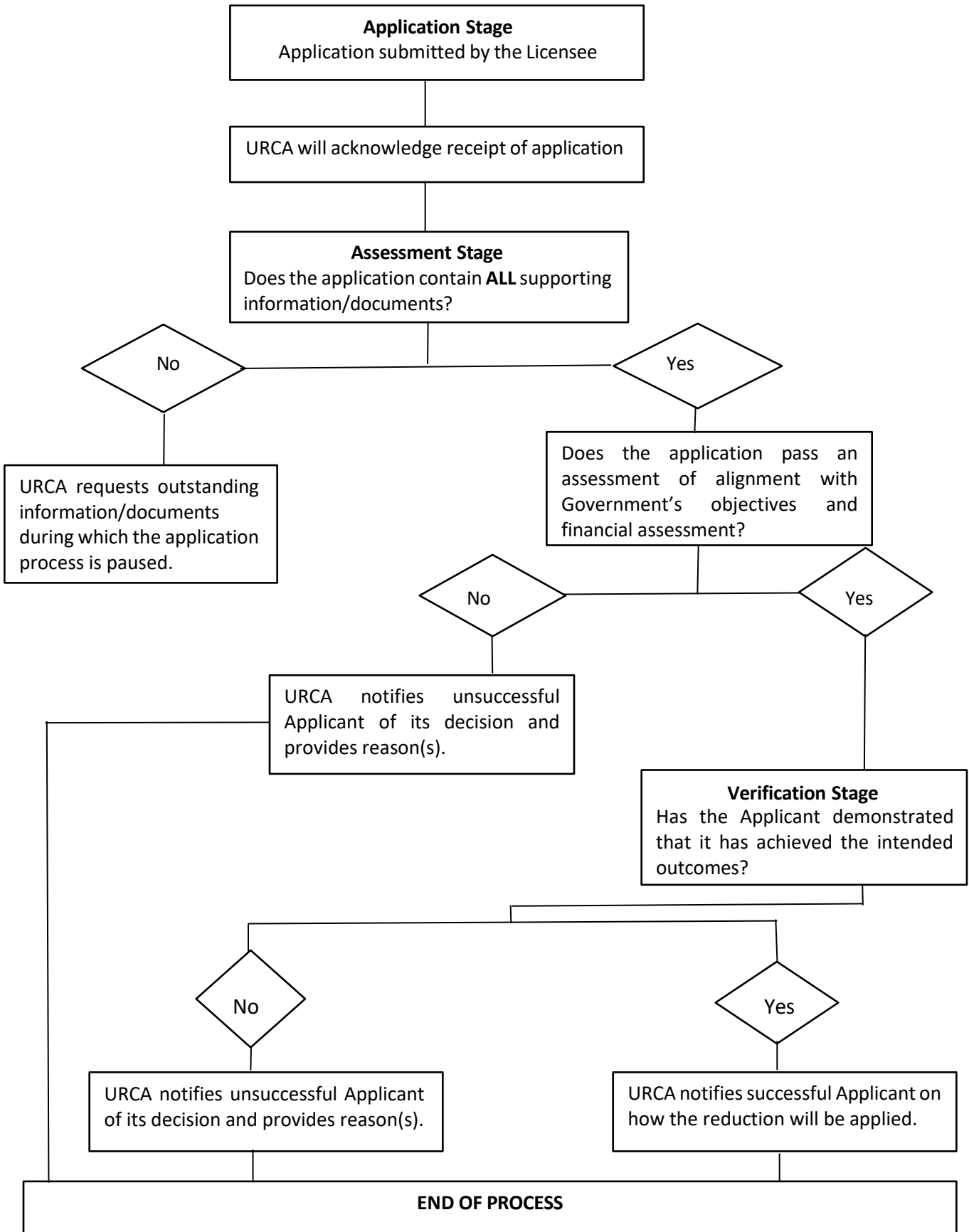
URCA will also accept any legitimate changes in the Investment plan / outcomes if these are due to unanticipated circumstances – in this case, the Applicant must provide sufficient evidence and explanation to prove this case.

Where URCA determines that the Applicant has delivered on the outcomes it has committed to within its application, URCA will then process the reduction in the Comms Licence Fee at end of the following Year.

Where URCA determines that the Applicant has failed to deliver on the outcomes it has committed to within its application (taking into account of any accepted changes to these outcomes), then URCA will inform the Applicant of its decision. Where URCA has relied on external information to verify an application, URCA will share that information with the relevant Applicant.

For the avoidance of doubt, in the event that URCA determines that the Applicant has not demonstrated that it has delivered on the intended outcomes, URCA will not refund the application fee back to the Applicant. The above procedural stages are illustrated in Figure 1 below:

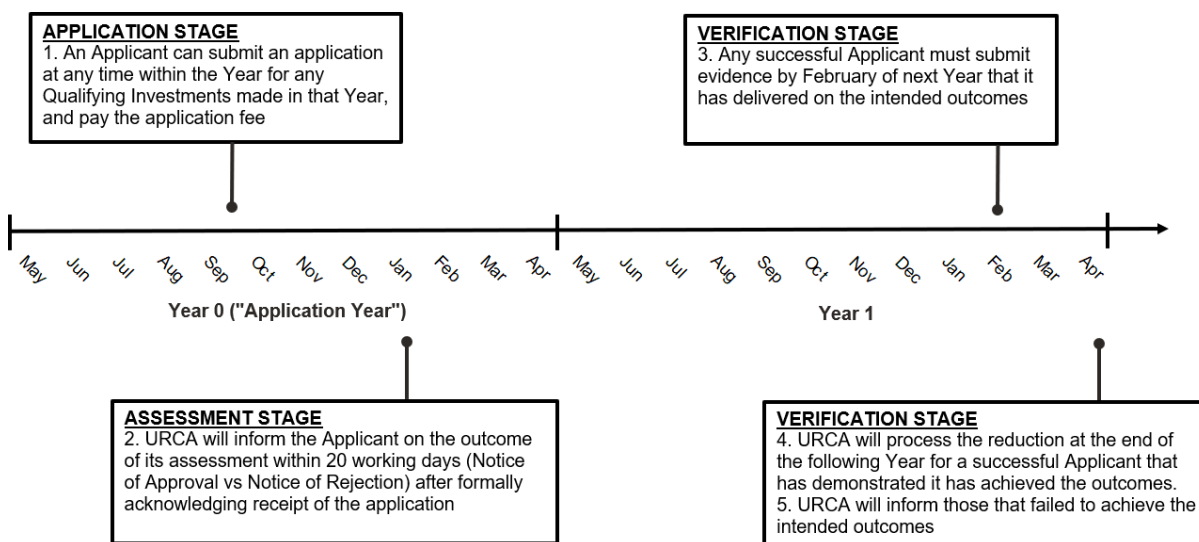
Figure 1:



5.4 Application and Verification Process Timeline

The overall timeline of an application process in any Year is highlighted in Figure 2 below.

Figure 2:



5.5 Application Fee

The implementation and administration of this verification process under the amendment of the Comms Act will result in incremental time and resource needs by URCA to review any application received from Licensees. Given this, URCA considers it reasonable to pass on these additional costs to the Applicants, rather than recovering these implicitly across all Licensees.

This is consistent with Section 92 of the Comms Act, which allows URCA to charge a fee for a variety of situations including *“charges for particular services rendered by URCA in the performance of its functions or the exercise of its powers under this Act”*; and that such fee must *“be set on an objective, non-discriminatory, transparent and proportionate basis”*.

Taking into account of the likely incremental resources and time that will be required for URCA to administer each application, URCA will charge an application fee for the administration of the verification process under the amendment of the Comms Act.⁵

Please note that the application fee is non-refundable and would apply to any application submitted by a Licensee. This includes any reapplications after an unsuccessful application.

6. Substantive Guidance on the Reduction in the Comms Licence Fee

The reduction in the Comms Licence Fee is designed to incentivize an increase in the deployment

⁵ The level of the application fee will be set out in Table 1 of URCA’s Fee Schedule as published on its website.

of electronic communication services, both in terms of extending geographic coverage of existing services across the country as well as facilitating the launch of new services across The Bahamas. It is also designed to reward those Licensees that invest and consecutively invest at least one hundred thousand dollars (B\$100,000) per annum in emerging technologies anywhere in The Bahamas.

Licensees that make a Qualifying Investment in the first Year will be eligible for a reduction in their Comms Licence Fee of the lower of that Investment or 0.75 percent of the Relevant Turnover in the following Year. For example, a Licensee who makes a B\$100,000 Investment in the first Year and has B\$10,000,000 of Relevant Turnover in the following Year, will, subject to meeting the requirements as set out in this Guidance Note, be eligible for a reduction in its Comms Licence Fee of B\$75,000 (i.e., as 0.75 percent of B\$10,000,000 is lower than the B\$100,000) in the following Year.

Licensees who make a Qualifying Investment in any consecutive Year will then be eligible for a reduction in the Comms Licence Fee by the lower of that Investment or 1.5 percent of the Relevant Turnover. For example, if the same Licensee makes a B\$100,000 Investment in the consecutive Year and has B\$10,000,000 of Relevant Turnover in the following Year, will, subject to meeting the requirements as set out in this Guidance Note, be eligible for a reduction in its Comms Licence Fee of the full Investment of B\$100,000 dollars (i.e., as B\$100,000 is lower than 1.5 percent of B\$10,000,000).

The entire process will start over if a Licensee fails to make a Qualifying Investment in any consecutive Year. For example, if a Licensee failed to make a Qualifying Investment in a given Year but makes a Qualifying Investment in the next Year, then a successful application by this Licensee in the following Year would result in a reduction in its Comms Licence Fee equal to the lower of the Investment or 0.75 percent of the Relevant Turnover in the following Year.

For the avoidance of doubt, any successful Applications will be rewarded with a reduction in their Comms Licence Fee that is paid in the following Year.

It is important to note that Licensees that are successful in an Application cannot apply for another reduction in their Comms Licence Fee within the same Year.

6.1 Qualifying Investment

URCA understands from its engagement with the Ministry of Finance that the reduction in the Comms Licence Fee will be applied to Investments that deploy new technologies anywhere in the country and/or expand existing networks to Underserved Areas. This is in line with the policy objectives of the Government in Section 3 above, as this will ensure that people and businesses across The Bahamas will be able to benefit from an improved access to new technologies and/or increased coverage.

Specifically, URCA understands that Investments of at least B\$100,000 that satisfies any of the following conditions may qualify to receive a reduction in the Comms Licence Fee:

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) to particular geographic locations (Family Islands, etc.) which are uneconomic to serve.

As discussed in Section 2, URCA defines Underserved Areas as any location that is consistent with the definition of Underserved Areas within the Universal Service Framework. However, given that the Universal Service Framework is due to be reviewed by URCA in due course, URCA temporarily defines any Underserved Areas as those geographic areas that are currently beyond the existing network coverage of the Applicant. URCA emphasizes that this is only an interim definition and will be superseded by any new Universal Service Framework (including any amendments) in the future.

In line with its overall approach to the regulation of the ECS in The Bahamas, UCRA will adopt a **technology neutral** approach in its verification of whether the Licensee's Investments satisfy any of the conditions above. This is because URCA is focused on delivering the right outcomes for consumers in The Bahamas rather than determining *ex ante* the specific technologies that can generate these outcomes. This means that URCA will consider any technology (fixed, fixed wireless or mobile) that is able to satisfy any of the conditions above.

For the avoidance of doubt, **the reduction of Comms Licence Fee will not apply to any Investment that enhances the quality of existing services within existing network locations.** The reduction will also not apply to, for example, any Investment that provides advanced connectivity to particular institutions such as education, public health or local Government premises.

6.2 Start Date

The application process will commence once the final Guidance Note is published in March 2023. As such, URCA will accept any application after that point.

For the initial applications, Qualifying Investments will relate to those submitted during the Year that started in May 2022 and ended in April 2023.

7. Right of Appeal

URCA's decision on the reduction in the Comms Licence Fee under the Order may be appealed to the Utilities Appeal Tribunal (UAT) pursuant to Section 111 of the Comms Act. For the avoidance of doubt, subject to any order or direction from the UAT or any other Court of competent jurisdiction, URCA will retain the status quo regarding the application until the outcome of the appeal has been decided.

In the event that the Applicant/Licensee appeal is successful, URCA will confirm the level of the reduction and how this reduction will be applied to the Applicant's Comms Licence Fees.



ANNEX A: Application Form

Please provide the following information, using the numbers of this form. Applicants are reminded that supplying misleading or inaccurate information may result in a rejection of the application and/or a fine duly imposed by URCA.

Contact Information

1. State the name and contact address of the Applicant.
2. Provide the following details of the person to whom URCA should send all correspondence relating to this application, stating their relationship to the Applicant:
 - 2.1 Name;
 - 2.2 Address (street and mailing address);
 - 2.3 Telephone number;
 - 2.4 Email address.
3. State whether you have successfully applied for a reduction in the Comms Licence Fee in the previous Year (and provide copies of the relevant documentation).

Information on the Investment

1. Provide a description of the Investment (including the financial value of the Investment in the Application Year).
2. Explain why this Investment qualifies for a reduction in the Comms Licence Fee based on the three (3) conditions for being considered a Qualifying Investment.
3. Provide description of the intended outcome of the Investment for the following Year.
4. Provide any other information that would assist URCA in its verification process.

Declaration

This Application Form must conclude with the following declaration which is to be signed by the Chief Executive Officer (or other duly authorised officer) of the Applicant:

The Applicant declares that, to the best of their knowledge and belief, the information given in this application form is true, correct, and complete, that true and complete copies of documents required to be submitted with this Applicant form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all opinions expressed are sincere.

Signature: _____

Date: _____

Position/Title: _____

ANNEX B: Guidance for the Description of Intended Outcomes

As per Section 5.1, Applicants are required to provide a description of the intended outcomes of the Qualifying Investment for the following Year as part of an Application. For this, Applicants should set out, at the minimum:

1. The parts of the network that will be deployed. For example, this could refer to the installation of fibre cables or ducts for a fixed network or the deployment of additional sites for a mobile network. As noted above, Applicants can also refer to the Investments that are needed to deliver additional capacity to the Family Islands (such as via subsea cables) but must link this Investment to delivering new services or extending the existing network to more users within these locations (item 3 below).
2. The location of the network deployment. Applicants should clearly set out the location using an easily recognisable geographic unit (such as streets, districts or settlements/towns) that would allow URCA to determine where consumers will benefit from this Investment.
3. The service and/or new service that will be provided to end-users in these locations. As part of this, Applicants should clearly set out a measurable improvement/change to end-users such as the number of premises connected with fibre-to-the-home or geographic area that would benefit from advanced internet connectivity.
4. The expected timing for when these intended outcomes will be achieved in the following Year.

The Guidance above concerns the description of intended outcomes at the Application Stage but Applicants must provide proof of the above outcomes to URCA at the Verification Stage. In particular, Applicants should provide clear confirmation on the parts of the network and the locations where the networks are deployed along with measurements on the improved/new connectivity that is provided to consumers within these locations. If the Applicant has not submitted any proof of expenditure at the Application Stage, the Applicant must provide proof at the Verification Stage that clearly shows investment/payment for each of the above items/categories within the Application Year.

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