



The Bahamas Telecommunications Company Limited

Response to:

URCA's Draft Annual Plan 2024

Consultation Document

URCA 02/2023

Issued: 21 December 2023

Submitted to:

Utilities Regulation & Competition Authority (URCA)

Legal, Regulatory and
Carrier Services Division
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Introduction

The Bahamas Telecommunications Company Limited (“BTC”) herein provides its response to the Utilities Regulation and Competition Authority’s (“URCA”) Consultation Document *Draft Annual Plan*, URCA 02/2023, issued 21 December 2023. The Consultation Document outlined URCA’s proposed projects and work plan for the electronic communications sector and the electricity sector in The Bahamas for 2024. In what follows, BTC provides commentaries to the matters discussed within URCA’s Draft Annual Plan.

General Comments

From the outset, BTC deems it necessary to once again raise concerns in relation to the deficiency of reliable electricity power supply in The Bahamas. The unreliable supply is a direct link and primary challenge faced by local Telecommunications Operators in the production of reliable services. The prolonged power outage results in extended disruption of telecommunications services, which in turn causes reputational damage to the Operator involved. Notwithstanding, the intermittent power diminishes the life span of the telecommunications equipment which increases the cost of repair for the Operators, which can otherwise be used for future investments and equipment upgrades. BTC urges URCA to take measures to ensure a quality and reliable electricity supply.

Regarding the projects carried over for 2023, BTC has noted several projects that have been carried over year after year again listed on URCA’s projects for 2024. BTC has noted the reasons that URCA has provided, particularly the review of the Universal Service Obligation that was contingent on the publication of the ECS Policy. However, URCA failed to provide a reasonable explanation for the delays of the other carry over projects. Moreover, BTC notes the number of projects/consultations that URCA crammed into the last trimester of 2023, three of which were issued weeks apart. BTC finds this practice unacceptable, as this impacts the work plan of the Operators given the employee constraints. BTC encourages URCA to limit the number of projects issued within a trimester.

The Retail Fixed Market Review

URCA’s planned review of the retail fixed market is one of many planned key projects for this year. BTC is very concerned with the relatively low priority attached to this project, given that the planned issuance of a consultation document on this matter is not scheduled until the last trimester of 2024, T3. While the final decision is also scheduled for T3 2024, the likelihood of completing the consultation process and issuing a decision all within only a few months is low. Given the many competing projects included in the Draft 2024 Annual Plan, BTC is very concerned that this critical project may once again be bumped into the following year as it has so many times in the past.

As URCA is aware, the last review of the retail fixed market was conducted in 2014. At the time, URCA recognized the need to move from rate of return (“ROR”) to price cap regulation and, more generally, to review the need for ex ante retail price rules, if any, going forward. The central part of that exercise involves conducting an updated retail fixed market review. In its 2015 Annual Report and 2016 Annual Plan, under the topic of “Encouraging Competition”, URCA indicated that it had begun the process of reviewing fixed market pricing rules in T1 2015 with the intention of completing the exercise by T2 2016. That target completion date was missed. In the URCA’s 2017 Annual Plan, the target completion date was shifted to T3 2017. It too was missed. URCA’s 2018 Annual Plan moved the completion date to T2 2018 and that was also missed. Each subsequent Annual Plan issued by URCA has included a planned review of the retail fixed services market, including the retail price rules, as a key planned project. However, the project never reached the point where a consultation document was issued. More recently, in its 2022 Annual Report and 2023 Annual Plan, URCA indicated that its planned retail fixed market review would “assess the state of competition in those markets and whether existing regulations are fit-for-purpose”, adding that the project had once again “commenced in the third trimester of 2022 and [was] expected to be completed in 2023.” The Draft 2024 Annual Plan has now moved the goalpost another year to T3 2024. BTC has little confidence that this important and long-delayed project will not be bumped a year down the road yet again, given that it is currently scheduled for the last trimester of 2024, with many other planned projects scheduled ahead of it.

A variety of reasons have been provided in URCA’s previous Annual Plans for the repeated delay of the retail fixed market review project. These include references to other projects that took precedence at the time, such as mobile liberalisation and the introduction of new mandated wholesale services (including broadband resale and wholesale broadband access). However, in most cases, no explanation for the repeated delays was provided. BTC is very concerned that the many competing projects URCA has scheduled for 2024 could once again impede the completion of the retail fixed market review. BTC considers that the retail fixed market review project should be of highest priority for 2024 planning purposes, along with the ECS licence renewal consultation. Before creating new QoS and USO/USF regulations or further reviewing 5G issues, BTC is of the view that URCA should complete the retail fixed market review and ensure that the remaining price regulations are fit-for-purpose – as was done by URCA for the mobile market in 2022.

The Draft 2024 Annual Plan states that further recent delays in the retail fixed market review project are attributable to difficulties with URCA’s market data collection exercise for the project. It notes that both BTC and Cable Bahamas Limited (“CBL”) asked for extensions in responding to URCA’s market data requests. In response, BTC notes that URCA has been collecting retail as well as wholesale fixed market data for years, including through its quarterly and annual Market Information Reports process established in 2017 (in ECS 28/2017). Further, since that time, URCA has requested multiple rounds of additional market data for fixed market review purposes. However, no consultation document was issued as per previous Annual Plans to formalize the fixed market review process, despite the many previous market data collection exercises conducted since 2017.

More recently, starting in February of 2023, URCA asked BTC and CBL to respond to further extensive and detailed market data and information requests (“RFIs”). BTC, for its part, made its

best efforts to provide complete responses to those RFIs, which in some cases required additional time given their complexity and level of granularity. Having responded to those RFIs, URCA then issued multiple follow-up requests for additional highly detailed market data and information. Overall, this multi-round market data collection process took the better part of 2023 to complete. While BTC questions the relevance of some of the requested market data and information for the purpose at hand, BTC is extremely concerned that by delaying the retail fixed market review to T3 2024 (as proposed in the Draft 2024 Annual Plan), much of the data collected over the course of last year will be considered out-of-date by URCA. If so, yet a further round of RFIs will be necessary, which no doubt will involve entirely new market data requests given the passage of time.

In BTC's view, URCA currently has more than sufficient data and information on the retail fixed market in The Bahamas to conduct a thorough market review and issue the consultation document setting out its preliminary determinations in the coming months – i.e., before the end of T1 2024. Indeed, given the length of time spent to date collecting retail fixed market data and information, URCA must already have a clear view of its preliminary determinations as to the continued appropriateness of the existing retail Price Rules (ECS 06/2014).

At the outset of the Draft 2024 Annual Plan, URCA notes that its objective is to become a “globally respected regulator”. However, it will be impossible to achieve this objective as long as URCA retains a ROR regulatory regime, a form of price regulation abandoned decades ago by virtually all other regulators. Consequently, BTC respectfully asks that URCA raise the retail fixed market review project to the highest priority level so that it can be completed by no later than T2 2024. Further delays can no longer be justified.

ECS Licence Renewals

BTC welcomes URCA's planned review of ECS licences issued in 2009 to assess whether their existing licence conditions remain relevant going forward and to also determine whether any license amendments or modifications may be necessary for licence renewal purposes. BTC considers that this planned review process will provide an opportunity to simplify and ensure uniformity in the structure and content of the licences. For instance, many sections of the existing licences that are either redundant or significantly overlap with existing established regulations – e.g., Consumer Protection Regulations (including marketing and billing practices), QoS Regulations, USO Regulations, Competition Guidelines, Retail and Wholesale Price Regulations, Wholesale Service Obligations, and Regulatory Accounting Regulations. Such conditions need not be repeated in the renewed licences. The relevant regulations could simply be cross-referenced instead. Otherwise, specific obligations included in the licences could conflict with established regulations. After all, while the licences are subject to review only every 15 years, regulations can be reviewed and modified over time as necessary.

BTC therefore suggests that in preparing for the planned ECS licence renewal process, URCA consider whether the new licences could be simplified and uniformly structured to the greatest extent possible. BTC supports the proposed T1-T2 2024 timeframe for this project.

The USO/USF Review Process

BTC also welcomes URCA’s planned review of the USO/USF framework. BTC agrees with URCA that there are multiple components to this planned project that will ultimately require more than one consultation process.

BTC previously addressed USO/USF framework issues in its response to URCA’s Consultation Document on the Draft ECS Policy 2023-26 (ECS 11/2023). To briefly reiterate, BTC agrees that all aspects of the existing USO policy and service designations should be re-evaluated for continued relevance today and into the future. BTC considers that the primary focus in this respect should be on USO broadband services, with technology-neutrality as a guiding principle. As well, BTC considers that government funding will be required to achieve new USO policy objectives (such as near 100% USO broadband coverage throughout The Bahamas). It is clear from experience in other countries such as the US, UK and Canada that significant government funding is required to achieve USO broadband coverage targets in rural and remote areas.¹ The same applies in The Bahamas. It would be unrealistic and even counterproductive to consider that taxing licensees or retail ECS service prices could provide feasible or appropriate means to fund USO policy objectives in The Bahamas. Government funding is a necessity.

In preparation for the USO/USF consultation, BTC suggests that URCA conducts a comprehensive review of USO/USF policies and practices in other countries (including those noted above) to develop best international practice options that may be practical and feasible in The Bahamas, along with a realistic target timeline for reaching USO coverage targets. The findings of that review should be shared with the Government to gauge its willingness and ability to support USO initiatives and the associated multi-year investments in uneconomic areas of the country. Ultimately, a subsequent multiphase consultation process with the industry will be required to develop and implement a new USO/USF regime for The Bahamas.

BTC supports URCA conducting preliminary research and consultation with the Government for this project in 2024; ultimately the public consultation phase of the process is best placed in 2025 as proposed in the Draft 2024 Annual Plan.

URCA Key Performance Indicators (“KPI”) for 2024

The proposed KPIs for 2024 in the Draft 2024 Annual Plan are divided into five categories: statutory/regulatory, finance, HR, IT, and URCA OPI. Many of the proposed KPIs are not in fact performance indicators per se, but rather operating metrics (e.g., annual employee sick days and

¹ In the case of the US, see: <https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program>. For the UK, see: <https://www.gov.uk/guidance/project-gigabit-uk-gigabit-programme>. For Canada, see: <https://ISED-ISDE.CANADA.CA/site/high-speed-internet-canada/en/universal-broadband-fund>.

average tenure); consequently, it is unclear what their purpose is. In any event, no performance standards are set for any of the KPIs, so ultimately there is no basis to assess performance using them.

Under the first category, statutory/regulatory KPIs, URCA plans to measure the time it takes to publish decisions after the close of a consultation. While BTC supports this metric, it notes that no target is set for this KPI. Consequently, its purpose is unclear. However, more importantly, no KPIs are proposed for the purpose of assessing the degree to which URCA meets its Annual Plan statutory/regulatory objectives. For instance, the Draft 2024 Annual Plan includes many planned ECS statutory/regulatory projects, including specific planned start and end timeframes, along with planned consultation launch and associated decision issuance timeframes (measured by trimester), yet no KPIs are set to measure how successful URCA is in terms of completing the plans or tasks it sets for itself. For instance, the fixed market review project discussed above has long been a planned project but it has yet to be completed after 10 years. However, there is no KPI for missed projects. The proposed KPIs focus solely on accomplishments while ignoring delayed and entirely missed projects. BTC suggests that the proposed statutory/regulatory KPIs be broadened to measure URCA's performance against its actual annual plans.

The following three KPI categories dealing with finance, HR and IT aspects of URCA operations are largely operating or cost metrics. While the latter are intended to measure various costs incurred by URCA, there is no KPI included to measure or incentivize cost savings or efficiencies. There are no targets or standards set such as operating cost increases relative to inflation. BTC suggests that the KPIs be broadened to measure URCA's efforts to operate more efficiently to better ensure and demonstrate that costs passed on to the industry in the form of licence fees are minimized to the greatest extent possible.

Lastly, BTC notes that there is insufficient information provided in the Draft 2024 Annual Plan to understand the nature or purpose of the three proposed URCA OPI KPIs. BTC suggests that an explanation of the intent of these KPIs be included in the final 2024 Annual Plan.

URCA Draft Budget 2024

URCA's Draft Budget 2024 includes details of its overall operating expenses ("opex") along with breakouts for its ECS and ES operating segments for the years 2022 and 2023 along with projections for 2024. According to the Draft Budget 2024, URCA's opex in 2024 is expected to increase very significantly - by 20% for its overall operations and 12% for its ECS segment operations relative to 2023. While these growth rates on their own are substantial, they follow even larger increases in the preceding year of 23% and 22%, respectively. Consequently, over the last two years, URCA's opex is projected to increase by 48% for its overall operations and 36% for its ECS segment operations. BTC considers the brief explanations for such extraordinary cost increases in URCA's budget insufficient. There appears to be no effort to control costs, as is reinforced by the absence of any reliance on cost-related KPIs (as discussed above).

As well, according to the Draft Budget 2024, URCA's ECS staff, non-executive and executive compensation costs are projected to increase over the two-year period 2022 to 2024 by 23%, 85%

and 25%, respectively. There is no indication of any change in ECS staff levels in the Draft Budget 2024; therefore, they appear to be solely related to salary and benefit compensation increases. According to the Government of The Bahamas' Department of Statistics, inflation as measured by consumer price index ("CPI") increased over the last two years by 8.7%.² The salary and benefit compensation increases to be provided to URCA ECS staff are roughly three times or even greater than this amount. Similar compensation increases apply at the overall budgetary level (i.e., including ES staff). Again, no satisfactory explanation was provided in the Draft Budget 2024 for such generous compensation increases.

There are other opex categories with alarming year-over-year cost increases as well. ECS premises costs and utilities are projected to increase 50% in 2024, after increasing by 56% in the previous year. ECS general and administrative expenses are projected to increase by 51% in 2024. Some of this latter increase is attributed to "bad debt charged for a major licensee that has not paid the assessed fee due to litigation." However, no adequate explanation is provided for such extraordinary year-over-year costs increases, and nor is any explanation provided as to the measures that have or will be undertaken to recoup these unpaid licence fees.

Overall, BTC is extremely concerned with the absence of adequate explanations of such enormous increases in URCA costs and, moreover, the apparent lack of effort to limit cost increases which ultimately are passed on to the industry licensees.

Review of the Network Quality of Service Regulations

BTC awaits URCA's review of the Quality of Service Regulations on Electronic Communications Networks and Services. However, it is pertinent to note that since the enactment of this regulation, BTC has not received any feedback on its submissions. This situation mirrors the level of engagement experienced during the submission of our quarterly Consumer Protection Reports.

BTC trusts that the review will take into account not only the passage of time since these regulations were introduced but also the unique geographical challenges that local operators face. Additionally, consideration should be given to the evolving competitive landscape, especially in light of new operators entering the market since the introduction of these regulations.

More importantly, BTC trusts that the review of the regulations will also consider the correlation between reliable power supply and the production of quality telecommunications services. Power deficiency makes it challenging to provide reliable telecommunications services.

² Government of The Bahamas' Department of Statistics, Bahamas National Statistical Institute, Consumer Prices Index, October 2023, measured over the period October 2021 to October 2023. See: <https://www.bahamas.gov.bs/wps/wcm/connect/3f846229-d74a-4185-8a8c-b2bc9b1235bd/BNSI+Press+Release+Prices+Oct2023.pdf?MOD=AJPERES>.

Spectrum Management Project: National Spectrum Plan 2024-27

BTC acknowledges the advancements in new technologies that utilise a broader and more diverse range of spectrum resources. We anticipate a continued increase in the development of low earth orbit satellites and unlicensed radio spectrum technologies.

BTC is particularly interested in URCA's National Spectrum Plan for 2024-2027 and how it treats the regulatory, technical, financial, and geographic implications of the aforementioned technologies.

Public Consultation on 5G – Focus on the Supply Side

In relation to URCA's ongoing Public Consultation on 5G technology, BTC raises questions concerning the allocation of resources by URCA and the tangible benefits derived from the outcomes of this consultation. We observe that both operators and consumers are predominantly influenced by market forces regarding the investment in and deployment of 5G technologies. Given that 5G and associated technologies are an inevitable progression, we anticipate a transition similar to that from 3G to 4G, where both technologies coexist harmoniously.

Consequently, BTC is eager to understand the findings of these studies and how they will shape URCA's future strategies and perspectives.

Consultation on the Code of Practice for Content Regulation

BTC anticipates engaging in a thorough and careful review of the Content Regulation Industry Group (CRIG) alongside the regulator taking into account the constant evolution of the distribution of content and the need to ensure that the Code remains fit-for-purpose.

Conclusion

BTC appreciates the opportunity to provide feedback to URCA's 2024 Draft Annual Plan and anticipates URCA's considerations of the comments made herein.

Reservation of Rights

BTC reserves the right to comment further on all issues and states categorically that the decision not to respond to any matter included in the Consultation Document in whole or in part does not necessarily indicate agreement in whole or in part with URCA's statements in the Consultation Document; nor does any position taken by BTC in its response mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.

Legal and Regulatory Division

The Bahamas Telecommunications Company Limited (BTC)

February 2, 2024