



REGULATION OF RETAIL PRICE FOR SMP OPERATORS - RULES

Consultation Document

ECS 76/2024

Issue Date: 4 December 2024

Response Date: 31 January 2025

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1 Background

The Utilities Regulation and Competition Authority (URCA) is the designated body for regulation and competition in the Electronic Communications Sector (ECS) in The Bahamas.

URCA is statutorily empowered to determine whether electronic communications markets are effectively competitive and delivering benefits for customers in The Bahamas. Promoting sustainable competition is one of URCA's core objectives. Amongst other things, URCA fulfils this mandate by periodically assessing competition at the retail and wholesale service levels.

URCA considers that it is good practice to review markets on a regular basis to ensure that ex-ante regulations remain fit for purpose and focused on Licensees with market power or SMP. Indeed, the regulatory framework applicable to electronic communications networks and services in The Bahamas requires URCA to regularly define relevant markets for the purposes of SMP regulation and to analyse these markets to ensure that regulatory measures remain appropriate considering changing market conditions. This is a process otherwise known as a market review.

URCA has recently undertaken a market review of key retail fixed electronic communications services markets, covering retail fixed voice, retail fixed broadband, and retail pay TV services. URCA published its Statement of Results and Final Determination of the Retail Fixed Market Review¹ on 1 August 2024, which sets out, inter alia, the following:

- URCA's Final Determination on its SMP/dominance assessment for the provision of retail fixed services in The Bahamas, which included:
 - The product and geographic market definitions for the retail services considered in the market review;
 - A determination of which operators have Significant Market Power ('SMP') in the relevant markets; and
 - The ex-ante regulatory remedies imposed on SMP operators, including the underlying market failures these seek to address.
- The comments and responses received from stakeholders in response to URCA's public consultation on the Preliminary Determination, and URCA's responses to those comments.

As part of the market review, URCA confirmed the continued need for ex-ante regulation on BTC and CBL in retail fixed service markets; however, URCA revised the set of ex-ante remedies imposed on both SMP operators. Table 1 provides a summary of URCA's final determination. The new regulatory obligations focus on the requirement to continue to supply standalone retail fixed services and an approval requirement for above-inflation price increases of entry-level

¹ ECS 71/2024

retail tariff plans.

Table 1: Summary of URCA’s final determination

Service	Market definition	SMP findings	Ex-ante remedies
Retail fixed voice services	<p><u>Product market</u></p> <p>Standalone fixed access, local, domestic, and international call services, across all relevant customer segments (i.e., both residential and business customers), irrespective of the underlying technology used to deliver these services.²</p> <p><u>Geographic market</u></p> <p>National market</p>	BTC has SMP	<ul style="list-style-type: none"> • BTC is required to continue offering its current standalone fixed voice tariff plans to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented. • BTC shall not increase its prices of entry-level standalone fixed voice plans³ above last year’s inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).
Retail fixed broadband services	<p><u>Product market</u></p> <ul style="list-style-type: none"> ▪ Retail standalone fixed broadband services, across all relevant customers segments (i.e., both residential and business customers), irrespective of the network technology⁴ used and the advertised download speed at which the service is offered. ▪ Multi-product bundles excluding pay TV (i.e., double-play bundles including fixed broadband and fixed voice), across all relevant customers segments (i.e., both residential and business customers), irrespective of the network technology⁵ used, and the advertised download speed at which the service is offered. <p><u>Geographic market</u></p> <ul style="list-style-type: none"> ▪ Geographic Market 1 - The islands where both CBL and BTC are offering broadband services.⁶ ▪ Geographic Market 2 - All remaining islands where only 	<ul style="list-style-type: none"> • CBL has SMP in Geographic Market 1 • BTC has SMP in Geographic Market 2 	<ul style="list-style-type: none"> • BTC and CBL are required to continue offering their current standalone fixed broadband plans and bundles including fixed voice and fixed broadband services to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented. • BTC and CBL shall not increase their prices of entry-level standalone fixed broadband plans⁸ above last year’s inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase). • BTC is required to offer geographic uniform prices for all its retail broadband services.

² This currently includes PSTN technology and Voice over Internet Protocol (VoIP) via FTTx or HFC networks.

³ Currently “Basic Landline” and “Business Voice Starter” for residential and business customers respectively.

⁴ In The Bahamas these services are predominantly offered based on wired technologies, via copper (DSL), HFC and FTTx, and recently LEO satellite technology.

⁵ Ibid.

⁶ This currently includes New Providence, Abaco, Grand Bahama and Eleuthera.

⁸ Currently BTC’s “Basic 8Mbps” and “Fiber 30Mbps” for residential and customers and “Internet 100 for business customers”; and CBL’s “RevNetPrime” for residential customers.

BTC has deployed network infrastructure to offer fixed broadband services.⁷

Retail pay TV services	Product market Retail standalone pay TV services, across all the relevant customers segments (i.e., both residential and business customers), and irrespective of the network technology used to deliver these services. ^{9,10} Geographic market National market	CBL has SMP	<ul style="list-style-type: none">• CBL is required to continue offering its current standalone pay TV tariff plans to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented.• CBL shall not increase its prices of entry-level standalone pay TV plans¹¹ above last year's inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).
Multi-product bundles including pay TV services	Product market All multi-product bundles including retail pay TV services ¹² , across all the relevant customers segments (i.e., both residential and business customers) and irrespective of the technology used to deliver these services. ¹³ Geographic market National market	CBL has SMP	No market-specific remedies are required, as the combined effect of the ex-ante remedies imposed in the other defined markets will address the anti-competitive concerns identified in this market.

Overarching (non-market specific) remedies for both SMP operators

Further to the market-specific remedies set out above, both BTC and CBL are subject to the following, non-market specific remedies:

- Both SMP operators are required to develop separated accounts in accordance with URCA's Accounting Separation Guidelines and submit these to URCA on an annual basis. The new reporting format should already be adopted for the 2024 Accounting Separation submission and SMP operators should notify URCA as soon as possible, if this is not feasible.
- Both SMP operators are required to notify URCA of any amendments, introductions or withdrawals¹⁴ of their retail tariff plans. This obligation requires the notification to URCA of any changes in an existing or new retail tariff plan, set out, at the minimum, the price and non-price terms of the tariff plan and the current/expected take-up of the plan.
- Both SMP operators are subject to a publication requirement to ensure that end users have access to all tariff plans

⁷ This currently includes Exuma, Andros, Bimini, and all remaining islands.

⁹ This currently includes HFC technology, satellite (DTH) technology, and Internet Protocol Television (IPTV) via fiber (FTTx) networks.

¹⁰ Whilst standalone IPTV services are currently not actively marketed by Licensees, this is based on commercial, rather than technical considerations. Given this, URCA considers it prudent to include these services within this defined market.

¹¹ Currently "Prime Local" and "RevTV Prime" for residential customers and "DTH Bronze" for business customers.

¹² This currently includes double-play including fixed voice and pay TV, double-play including fixed broadband and pay TV services, and triple-play including fixed voice, fixed broadband and pay TV services.

¹³ In The Bahamas these services are currently delivered via HFC, FTTx (IPTV), and satellite (DTH) technology.

¹⁴ Considering the new ex-ante remedies imposed by URCA in the markets for retail fixed voice services, retail broadband services and retail pay TV services set out above, withdrawal of existing retail tariff plans are only permitted for multi-product bundles.

currently available to them and the price and non-price terms of each tariff plan offered by BTC and CBL, thus facilitating their ability to compare retail tariff plans and select the most appropriate tariff for them. SMP operators are required to publish all tariff plans offered to residential and business customers on their websites.

To implement these ex-ante remedies, URCA has developed revised (and simplified) Retail Pricing Rules which are set out in the attached document. These Rules are intended to provide further guidance on the actions required for each retail fixed service (in terms of notification, filing and approval requirements) and the procedures for these actions. URCA's proposed revisions to the Retail Pricing Rules seek to:

- structure the Retail Pricing Rules in a comprehensive, clear, and accessible manner;
- clarify procedural aspects and information requirements from relevant operators to mitigate any inefficiencies in URCA's investigations and assessments; and
- ensure the Retail Pricing Rules are up-to-date (in terms for the revised ex-ante remedies set out in ECS 71/2024) and fit for purpose, considering increased competition in the relevant markets.

As part of this review, URCA has taken into account, amongst others, its experience from the application of the Retail Pricing Rules to date, as well as the current state and foreseeable developments in the ECS. This is to ensure that any insights gained from the practical applications of the Rules are considered and that the new Rules remain fit for purpose.

The purpose of this consultation is to: (i) present URCA's proposed revisions to the Retail Pricing Rules; and to (ii) invite feedback from all relevant persons on the revised Rules.

2 How to Respond to this Consultation

URCA invites responses to this Consultation Document from all stakeholders and interested persons. Please note that responses to this Consultation Document must be submitted to URCA on or before 5:00 p.m. on **31 January 2025**.

Written responses or comments on this Consultation Document should be sent to URCA's Director of Electronic Communications:

- by mail to P.O. Box N 4860, Nassau, The Bahamas; or
- by email, to info@urcabahamas.bs.

URCA advises that its **office will be inaccessible during this consultation process** due to ongoing renovations. As such, URCA is unable to receive responses by hand, and respondents are encouraged to submit their responses as requested above. URCA apologizes for any inconvenience caused in this regard. Persons may obtain copies of this Consultation Document by downloading it from the URCA website at www.urbahamas.bs.

When submitting responses, respondents are required to provide supporting explanations/reasons for each of their submissions. All responses must clearly indicate the reference to the Consultation Document and the questions addressed for each of the responses provided.

URCA will then review the responses received and publish a Statement of Results on the consultation along with the final set of Retail Pricing Rules.

URCA reserves the right to make all responses available to the public by posting responses on its website at www.urbahamas.bs. Responses marked 'confidential' should provide supporting reasons to simplify URCA's evaluation of the request for confidentiality. URCA may, in its sole discretion, choose whether to publish any confidential document or submission. Further information on URCA's procedure for handling information marked 'confidential' submitted by consultation respondents and URCA's consultation procedures in general can be found in URCA's Consultation Procedure Guidelines.¹⁵

Please take note that any response to this Consultation Document that does not comply with the requirements set out herein may not be considered by URCA.

¹⁵ URCA 04/2017 available at <https://urbahamas.bs/wp-content/uploads/2017/07/URCA-042017-URCA-Consultation-Procedure-Guidelines.pdf>

3 Summary Overview of key Proposed Amendments to the Retail Pricing Rules

To guide the stakeholders' review of the draft revised Rules, URCA sets out below a brief overview of the key amendments to the Retail Pricing Rules, in line with the ex-ante remedies in the Final Determination (ECS 71/2024).

3.1 Rebalancing of the Regulatory Burden

The revised ex-ante remedies, and the draft Rules which implement them, are designed to reduce the regulatory burden on SMP operators where it not necessary, given increased competition in the relevant markets. This is demonstrated, amongst others, through:

- The removal of approval requirements relating to multi-product bundles, except relating requirements for SMP operators to continue to provide fixed voice and broadband bundles (classified as Non Withdrawal Bundles);
- The removal of all requirements relating to promotions by SMP operators;
- The reduction in the number of actions for which URCA's approval is required;
- The lessening of information requirements for both applications that require URCA's approval and notifications to URCA; and
- A shortening in the length of time URCA will take to process applications requiring URCA's approval.

However, as set out in ECS 71/2024, there are still aspects of SMP operator decision-making that must remain subject to URCA's approval, as well as actions that the relevant SMP operators are not permitted to take, in order to protect end users. These include actions relating to price increases for entry-level standalone fixed services (Price Capped Services) and those standalone retail tariff plans which SMP operators are required to continue to provide (Non Withdrawal Services).

3.2 Approval and Notification Requirements

Table 2 below summarizes the requirements relating to Regulated Services within the new Retail Price Rules.

- **Price Capped Services**, i.e. the entry-level standalone fixed services provided by SMP operators, are now the only services for which some changes are subject to approval by URCA.
 - Changes for which approval is required relate to above-inflation price increases for Price Capped Services and the introduction of new Price Capped Services. The Annex to the draft Retail Pricing Rules explains how to determine whether a

proposed price increase is to be considered above-inflation and thus requiring approval by URCA.

- Below-inflation price changes, and changes to non-price terms and conditions of Price Capped Services only require notification to URCA.
- **Non Withdrawal Services**, i.e., standalone retail fixed voice, standalone fixed broadband, fixed voice and broadband bundles, and standalone pay TV services, are services which SMP operators are not permitted to withdraw and/or discontinue.

The revised Rules set out the regulatory requirements and processes for specific actions by SMP operators related to these services and, for completeness, those relating to other Regulated Services.

Table 2: Approval and Notification Requirements for Regulated Services

	Key requirements	Relevant Section of the Rules
Permanent, above-inflation price increase of a Price Capped Service	Approval	Part 3A
Permanent, below-inflation price changes to a Price Capped Service	Notification	Part 3B
Permanent price changes to a Non Price Capped Service	Notification	Part 3B
Withdrawal/discontinuation of a Non Withdrawal Service	Not Permitted	Part 3C
Withdrawal/discontinuation of other Regulated Services	Notification	Part 3C
Introduction of a new Price Capped Service	Approval	Part 3D
Introduction of a new Non Price Capped Service	Notification	Part 3E
Changes to non-price terms and conditions of a Regulated Service	Notification	Part 3F

3.3 Annual Tariff Filing Requirements

SMP operators will be required to file with URCA, on an annual basis, the retail tariff plans for all their Regulated Services available at the end of the calendar year. This will enable URCA to set baseline prices at the start of each year, upon which price inflation calculations will be based. It will also allow URCA to monitor all retail prices within the market.

4 Consultation Questions

The attached document set out the revised, draft Retail Pricing Rules. Upon review of these Rules, stakeholders are asked only to respond to the following questions.

Question 1:

Are the regulatory requirements (in terms of notification to URCA and approval by URCA) set out in the new Retail Pricing Rules clear, comprehensive, and complete? If not, please provide details on what requirements for what services are not clear or missing.

Question 2:

Are the regulatory processes governing the notification to URCA and approval by URCA set out in the new Retail Pricing Rules clear, comprehensive, and complete? If not, please provide details on what requirements for what services are not clear or missing.