

The Bahamas Telecommunications Company Ltd.

P. O. BOX N-3048 NASSAU, BAHAMAS

TEL: (242) 302-7000



June 29, 2012

Mrs. Kathleen Riviere-Smith
Chief Executive Officer
Utilities Regulation and Competition Authority
UBS Annex Building
East Bay Street
Nassau, The Bahamas

Dear Mrs. Riviere-Smith,

Re: Submission of the Bahamas Telecommunications Company Limited (BTC)
Response to URCA's Public Consultation Document: Framework for the
Clarification and Implementation of Existing Universal Service Obligations (USO)

BTC herein submits its response to the Public Consultation Document on the Utilities Regulation and Competition Authority (URCA) Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) under Section 119 and Schedule 5 of the Communications Act 2009 (ECS 12/2012).

BTC looks forward to further engagement with URCA with respect to the captioned subject matter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Felicity L. Johnson', is written over a blue circular stamp or seal.

Felicity L. Johnson
Senior Vice President of Legal, Regulatory & Carrier Services
& Company Secretary

Attachment: (1)



The Bahamas Telecommunications Company Limited:

Response To

**Public Consultation Paper on Framework For the
Clarification and Implementation of Existing Universal
Service Obligations (USO) under Section 119 and
Schedule 5 of the Communications Act 2009
(ECS 12/2012)**

Legal, Regulatory and
Carrier Services Division
29 June, 2012

Executive Summary

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to respond to this Public Consultation on the Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) ("the Public Consultation") under Section 119 and Schedule 5 of the Communications Act, 2009 ("the Act").

It is useful to point out that while URCA did not conclude the initial USO Public Consultation conducted by the Committee for the Privatization of The Bahamas Telecommunications Company Limited (BTC) in 2009 ("the 2009 Public Consultation"), a significant proportion of the comments BTC provided in that consultation are also relevant today in the context of this present consultation. In cases where BTC deems the arguments raised in the earlier consultation, still relevant, the company will repeat those comments in this Public Consultation.

In this Public Consultation, URCA has provided further clarity with respect to the definition of fixed voice telephony which allows for the provision of the service using wire or wireless technology. This is important as it allows the USP, the flexibility in choosing the appropriate technology in delivering the service as part of its fulfillment of its USO. This approach of allowing for a definition of fixed voice to be technology neutral is pragmatic and would allow for the more efficient use of resources in deploying service in unserved areas.

The gathering of data to ascertain the status of the Universal Service Provider (USP) with respect to its existing Universal Service Obligations (USO) is a significant addition compared to the 2009 Public Consultation. The USO data gathering exercise is important in determining the existence of an Access Gap. It is useful to point out that the existence of an Access Gap, may not lead to regulatory intervention. This is particularly relevant where there are profitable customers in an area which may generally be considered unprofitable. Such a scenario, provides an opportunity for smaller providers to exploit potential niche markets for the provision of telecommunications services. So, in intervening in the market relative to Universal Service Obligations, it is important that URCA weigh the relevant cost of intervention against the potential benefits. The cost should not be disproportionate to the benefits.

In the calculation of USO cost, BTC notes the departure in this Public Consultation compared to the initial consultation of 2009. In the 2009, Public Consultation, the Universal Service Provider (USP) was given the choice as to whether it would use current versus historical costs in the calculation of Universal Service costs. In this Public Consultation, the USP is somewhat limited to the use of a historic Fully Allocated Costs (FAC) model given that this is the model that is currently being used by providers. BTC maintains that the USP should have the flexibility, albeit with the appropriate defense for use, in deciding the use of a FAC model using historic costs or a current cost model. In particular, where the FAC model does not deliver location specific detail, BTC should be able to conduct a bottom-up analysis using current costs in the calculation of its USO cost.

Further, BTC had expected that there would have been a discussion on the treatment of Bad Debt Expense in this Public Consultation. BTC is of the view that the Bad Debt Expense associated with the delivery of service as part of the fulfillment of universal service obligations should be treated in

the same manner as expenses associated directly with the delivery of service as part of USO. In reviewing USO Public Consultations from other jurisdictions, the treatment of Bad Debt Expense is significant as part of the overall discussion on the net USO cost. In uneconomic areas where BTC is obliged to provide USO service, it is not unusual for there to be a higher propensity to incur bad debt expense.

BTC is of the view that URCA should have factored the ubiquity of cellular mobile services as evident by the mobile penetration rate in The Bahamas, in its discussion of access to public payphones as part of BTC's Universal Service Obligations (USO). Undoubtedly, in some areas, there is a decline in public payphone usage as a result of the increased use of cellular mobile service. Further, in the Public Consultation, URCA has put forward a proposal for public payphones to be within twenty minutes walking distance or a one (1) mile radius from a populated area. This proposal ignores the underlying demand for public payphones in some areas. In more affluent areas, where there are more persons with mobile phones, such a proposal can be quite inefficient as BTC would be forced to provide access to public payphones even when the demand in those areas do not warrant such instruments.

URCA has specified the maximum distance between dwellings for the purposes of populated areas as 220 yards. A review of the accompanied footnote in the Public Consultation indicates that URCA has used a very small sample of countries all of which are western European countries with very little similarities to The Bahamas. Further, in the case of France, the data presented dates back to 1982. Further research is needed taking into account the population density in The Bahamas, particularly on some of the less developed islands, before determining the appropriate distance for the purposes of populated areas. It is important that this proposal of 220 yards as the distance between dwellings is revisited, as getting it wrong can be very costly for USP in fulfilling their USO.

Finally, BTC's position is that the definition of market based funding as defined in the Public Consultation covers very little by way of the various funding mechanisms available to fund USOs. Notwithstanding the inadequacy of the definition, BTC is in agreement with tradable universal service obligations, or what is referred to as pay or play mechanism, where the operator can either choose to participate in the provision of the USO or pay other operators to ensure the provision of the USO. If appropriately structured, this option can yield efficient outcomes, where the USP can opt to have another provider deliver services in fulfillment of its USO, where it is more cost efficient for that operator to provide service in a given area.

Responses to Public Consultation Questions

Below are the responses to the Public Consultation questions:

Question 1:

Do respondents agree with URCA's proposal to include 'access' in the definition of Basic telephony services for universal service purposes?

BTC has no objections to the inclusion of 'access' in the definition of basic telephony services. The company is of the view that 'access' is implicit in the definition of basic telephony services.

Question 2:

Do respondents agree with URCA's proposed working definition of Fixed Voice Telephony for universal service purposes?

BTC has no objections with the definition of 'fixed voice telephony'. What is important here is that the definition is such that it is technology neutral, allowing the Universal Service Provider (USP), the flexibility in choosing the appropriate technology that allows for efficient use of resources.

Question 3:

Do respondents agree with URCA's proposal that call management services and features should be excluded from the Universal Service Obligation?

BTC is in agreement that call management services and features should be excluded from the Universal Service Obligation.

Question 4:

Do respondents agree with URCA's proposal that the burden should rest upon the designated USP to satisfy URCA that any charge imposed by the USP for the service is affordable, having regard to the factors listed?

In this Public Consultation, 'Basic Telephony Services' are defined as access, local and inter-island calls. All of the services listed are subjected to retail price regulation. The charges for these services must first be approved by URCA and are cost based using BTC's separated accounts. There is already in place a set of objective criteria as per the Retail Pricing Rules (ECS 15/2010) for the imposition of charges for price regulated services.

Under the existing arrangement, where there is geographic averaging of prices, this ensures that subscribers irrespective of location, whether they are located in profitable or unprofitable are subjected to the same price regulated charges.

Question 5:

Do respondents agree with URCA's proposal not to specify a bandwidth throughput for CBL's Internet Services USO?

Consistent with its SMP Obligations, as part of its USO, CBL should be required to provide high speed connectivity. Specifying high speed connectivity as part of CBL's USO would provide the much needed clarity to Section 119 (1)(b) and Schedule 5, 1(b)(ii) of the Communications Act.

BTC has no objection to not specifying a bandwidth throughput for CBL's Internet Service. However, as indicated, CBL's USO with respect to provision of Internet service should specify high speed connectivity.

Question 6:

Do respondents agree with URCA's proposal to retain BTC's Dial Up Internet Services USO (i.e. narrowband)?

BTC agrees with the retention of BTC's Dial Up Internet Services as defined in paragraph (2) of Schedule 5 of the Communications Act, where dial up is defined as, 'the provision and use of internet connections capable of 56kbps transfer speeds'.

Question 7:

Do respondents agree with URCA's proposal that the public pay apparatus be available within twenty minutes walking distance (one (1) mile) from a populated area to pay apparatus, or from one pay apparatus to another within the same populated area?

The challenge with URCA's proposal here is that it can lead to an inefficient use of resources. With high mobile penetration rates in The Bahamas, there is a reduced demand for public payphones. Providing access to payphones in areas where there is no demand for such access, can lead to an inefficient use of resources. This proposal of placing a public payphone within one (1) mile or within twenty (20) minutes walking distance of a populated area is not an efficient approach. It is perhaps more appropriate to look at the placement of these apparatus in shopping malls, public buildings and specified institutions.

Question 8:

Do respondents agree with URCA's proposal that BTC continue to make available a specified (minimum) number of public pay apparatus available in all public places (e.g. shopping malls and shopping centres, public parks, public buildings, specified institutions, marinas, ports of entry, public tertiary institutions, etc.?)

BTC has no objections to the placement of public pay apparatus in public places (e.g. shopping malls, shopping centres, public parks, marinas, etc.). However, BTC objects to URCA specifying the minimum number of these apparatus that should be placed in public places. Again, given the ubiquity of cellular mobile service, there is a reduced demand for public payphones. BTC should have the flexibility to determine the minimum number of these devices that should be placed in public areas.

Question 9:

Do respondents agree with URCA's proposal that the additional channels comprising the Basic Television Services packages should be sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment?

Users of the service ultimately should determine the content by way of additional channels. BTC notes URCA's position as outlined in Section 3.4.2 – Scope of the Basic Television Services in the Public Consultation that, 'URCA is of the preliminary view that total access costs should not be borne solely by the Basic Television Services USO.' Taking into account the pay or play mechanism as outlined in the Public Consultation, there is the option for CBL to pay another

provider to deliver Basic Television Services in fulfillment of its USO. It is important to factor in the pay or play option in discussing the funding for the provision of Basic Television Services.

Question 10:

Do respondents agree with URCA's proposal that total access costs not be borne solely by the Basic Television Services USO multi-channel offering but rather be shared by the other USP's communication services that share the same access connection?

This is not entirely clear and will require further discussion. In calculating the cost of providing Basic Television Services, it is the avoidable costs associated with the provision of the universal service. So, if there is part of the access costs that is not avoidable in the provision of a universal service, given that this fixed cost is also used in the provision of another communication service, based on URCA's own reasoning this cost should not be included as part of the calculations of USO.

Question 11:

Do respondents agree with URCA's proposal that designated Specified Institutions should be defined as follows: public and church operated schools, public libraries, public hospitals and public medical clinics, senior citizens homes, and orphanages?

There are no objections to the specified institutions listed.

Question 12:

Do respondents agree with URCA's proposal that URCA establish a Specified Institutions Register and update and publish that Register semiannually on its website?

BTC has no objection to this proposal. It is worth repeating that the Communications Act is not clear as to which entity has responsibility for the provision of Internet services in areas where there is the presence of both CBL and BTC. Clearly, both companies should not be required to provide 'free' services to the same institution.

Question 13:

Do respondents agree with URCA's proposed working definition of Community Centres?

BTC has no objection to URCA's definition of a community centre as a 'not for profit' organization. It is important that the definition is crafted in such a way that these organizations do not profit from the free Internet services provided by the USP as art of its USO.

Question 14:

Do respondents agree with URCA's proposal that a Community Centre should provide, at a minimum, the following information to be registered with URCA for consideration of the universal services specified at paragraph 2(e)(vi) of Schedule 5 of the Communications Act?

In addition to the information listed that will be requested by URCA for consideration of the universal services specified, the operator(s) of the Community Centre should provide a sign Declaration stating that there will be no market based charges for the universal services specified at paragraph 2(e)(vi) of Schedule 5 of the Communications Act.

Question 15:

Do respondents agree with URCA's proposal that Community Centers demonstrate each year they meet the published requirements to both URCA and the USP from which they are seeking universal services?

BTC has no objections to this provision.

Question 16:

Do respondents agree with URCA's proposal that Universal Services be accessible to the differently-abled or those members of society with functional impairment?

As a matter of principle, BTC is in agreement that telecommunications services should be accessible by the differently abled.

Question 17:

Do respondents agree with URCA's proposal that specialized equipment with the features identified in Section 3.6 of this Consultation be made available at subsidized rates to the differently-abled?

Whilst BTC as a matter of principle supports access to telecommunications services by the differently abled, it is rather premature to provide support to subsidizing the various features outlined in Section 3.6 of this Consultation Paper. The following should be weighed in the discussion on this question:

- Firstly, there is no clear understanding of the cost involved in providing such features.
- Secondly, URCA has not started the process of engaging organizations within the community that represent the differently-abled. This suggests that at the moment, URCA has no statistics on the number of persons that can benefit from such a service or which of the features or combination thereof will be appropriate.
- Thirdly, there is no discussion in this Consultation Paper on funding alternatives for the provision of telecommunications services to the differently abled. In some jurisdictions, funding is provided by way of direct government subsidies.

Question 18:

Do respondents agree with URCA's proposal to implement a reliable register of those differently-abled members of the society who are to benefit from the USO services?

BTC has no objections to URCA compiling a register of those persons that are differently-abled members of society.

Question 19:

Do respondents agree with URCA's proposal to adopt 220 yards as the maximum distance between dwellings for the purposes of populated areas?

In specifying the maximum distance between dwellings as 220 yards for the purposes of populated areas, BTC notes that the accompanied footnote in the Public Consultation indicates that URCA has used a very small sample of countries, all of which are western European countries with very little similarities to The Bahamas in arriving at this 220 yards. Further, in the case of France, the data presented dates back to 1982. Further research is needed taking into account the population density in The Bahamas, particularly on some of the less developed islands, before determining the appropriate distance for the purposes of populated areas. So, whilst BTC agrees in principle as it has in its original response in 2009, the definition ought to include distance, the specified distance ought to be derived with more objectivity (i.e. larger sample, involving more countries that are more representative of The Bahamas.).

It is important that more research is carried out on the maximum distance between dwellings for the purposes of populated areas. This can have a significant impact on USO cost, if the maximum distance specified is prohibitive.

Question 20:

Do respondents agree with URCA's proposal that 'inhabited dwelling' should mean dwellings that are:

**non transient in nature;
residential (non commercial); and
inhabited (non vacant, partially constructed or abandoned)**

BTC has no objection to this definition.

Question 21:

Do respondents agree with URCA's proposal that 'the appropriate unit of measurement of net avoidable cost be that of individual islands?

BTC supports the position that the unit of measurement of calculating the net avoidable cost is that of the individual island, given the complexity of modeling for each grouping of unprofitable users.

However, this should not limit BTC to the extent that it can provide some bottom up calculations for customer groupings that are unprofitable.

Question 22:

Do respondents agree with URCA's proposals detailed above and that the relevant costs that the Universal Service Provider should use in its calculation of its Universal Service Obligation should be:

**Capital costs that can be avoided;
Avoidable operating expenditures; and
Avoidable overheads**

The calculation of relevant costs in the calculation of USO, is consistent with international best practice and there are no objections.

Question 23:

Do respondents agree with URCA's proposal that incremental revenues for the purposes of USO be inclusive of the direct and indirect revenues as detailed in Section 4.1.2 of the Public Consultation document?

Whilst there are no objections to the inclusion of the direct and indirect revenues as detailed in Section 4.1.2 of the Public Consultation, it is equally important that the outpayments to the interconnecting party (i.e. other licensed operator) is included as a cost as part of the net USO cost calculation. It is not just the revenues that are derived from calls terminating to unprofitable islands or unprofitable customers, but there are also outpayments when these unprofitable islands or unprofitable customers place calls to customers of other licensed operators. If there is a traffic imbalance, i.e. more outgoing calls to a customer of another network than calls that originate from the unprofitable customer, the results can be a net cost increase for BTC.

Question 24:

Do respondents agree with URCA's proposal to make an efficiency adjustment based on any annual productivity gains the USPs achieve?

BTC's Cost Efficiency is a subject of a separate Public Consultation. BTC will reserve any comments with respect to a discussion on efficiency adjustment.

Question 25:

Do respondents believe that each of the benefits listed in Section 4.1.4 of the Public Consultation document are pertinent to the net cost calculation in The Bahamas.

The challenge is capturing and calculating a lot of these benefits as part of the net cost calculation of USO.

There should be recognition of the following:

- There is an inherent challenge in calculating the *intangible benefits* that are outlined. While conceptually, one can agree that these benefits should be subtracted from net USO cost, it is difficult to assess the value of Brand and value of access to market information.
- In reviewing the benefits outlined, it is very much apparent that with liberalization of the sector, it would become increasingly difficult to capture the intangible benefits of Life cycle effects, Volume discounts, and Brand Value.
- If these intangibles could have been captured and appropriately assessed, there would be no need for regulatory intervention for USP to provide service in some areas.

In addition to the challenge in measuring these intangible benefits, the benefits as outlined in Section 4.1.4 are not pertinent in the net cost calculation of USO in The Bahamas. Below, BTC has looked at each benefit and its relevance:

- Enhanced Brand Recognition/Corporate Reputation: BTC is firmly of the view that this has no relevance in The Bahamas. BTC until 2011 was a government owned entity, where the provision of telecommunications services in unprofitable areas was viewed as an extension of government's social policy. Even today, there is still the perception that the company is a government entity and the designation as a Universal Service Provider in the short to medium term would not have necessarily enhanced brand recognition.
- Ubiquity – customers moving from unprofitable to profitable areas and staying with BTC given the company's greater profile as a USP compared to its competitors. In such a small market and the ability of competitors to undercut BTC given that they would not have the legacy costs associated with an incumbent, the competitor is well placed to cherry pick the more profitable services and provide these services to customers as they move to the more profitable areas. In the more developed islands, i.e. New Providence, Grand Bahama and Abaco, customers would have access to inter-island toll services and local calls from known competitors.
- Life cycle – by serving customers when they are uneconomic, BTC has a better chance of retaining them when they become economic. The challenge with this benefit is being able to quantify the net benefit of life cycle. As in most developing countries and particularly where there is the absence of income tax, it is difficult obtaining reliable data to estimate the changing profile of households.
- Marketing – As URCA has stated implicitly, the commercialization of customer usage is not applicable today and may need to be revisited as the market matures. Advertisements on public apparatus and the commercialization of customer usage are not benefits to be included as part of net USO cost.

Question 26:

What method or combination of methods for calculating each of the specific benefits detailed in Section 4.1.4 of the Public Consultation document do respondents consider to be the most appropriate?

With the exception of Payphone Advertising (which is not carried out in The Bahamas), the calculations of these intangible benefits are not appropriate for a market like The Bahamas that is in the early throes of liberalization. The very limited sample that URCA has presented, shows countries with no similarities to that of The Bahamas. In the United Kingdom, Oftel and BT were at odds with respect to the estimation of these intangible benefits, with the regulator, Oftel, over estimating the benefits.

Question 27:

Do respondents agree with URCA's proposed approach to establish a threshold for the determination of an unfair burden and should that threshold be set at 80%?

BTC has significant reservations and object to the use of market share threshold of 80 percent as a primary determinant in assessing an unfair burden. This is particularly a concern for BTC given that basic telephony service consists of access, local and inter island calls. With further liberalization of the market and in the future, number portability, it provides opportunities for competitors to cherry pick the more profitable services, while the USP is stuck with the less profitable services.

BTC maintains that once the USP that the criteria for the USP should be to demonstrate that there is a net USO cost and this should be irrespective of market share.

Question 28:

Do respondents agree with URCA's proposed approach, in the instance where the regulatory cost of administering the USP are disproportionate to the net transfer to the USP that the USP bears the net USO cost?

Having taken into account the principles of proportionality and the minimization of market distortion, BTC agrees in principle that where the regulatory cost outweighs the net transfer, it is economic for the USP to absorb the net cost. However, while BTC is in agreement in principle, there is a need to ensure that there is transparency with respect to the cost associated with administering the Universal Service Funds. In BTC Response of 2009, the company had put forward the recommendation that the Fund is administered independently.

Question 29:

Do respondents agree with URCA's proposed approach, in the instance where the regulatory cost of administering the USP are not disproportionate to the administrative cost of establishing the USF, that URCA examine whether or not the USP is able to achieve a fair rate of return on capital employed (ROCE) and the extent to which the USPs can rely on revenues from the non USO services to support the provision of the USO services?

BTC is firmly of the view that there is no need for URCA's intervention to carry out these further assessments. If there is a net cost for the provision of USO, this should trigger the steps for accessing funds. URCA's proposal would involve BTC cross subsidizing its USO services by non USO services. This is not a sustainable proposition and one that the company do not support.

Question 30:

Do respondents consider URCA's competition criteria to be appropriate for assessing the issue of unfair burden? Are there other criteria that URCA should consider?

BTC is in full support of a more dynamic analysis of competition in the market in assessing the issue of unfair burden. The evolution of competition in the market place is an important consideration given that the communications sector in The Bahamas is at the early throes of liberalization.

While admittedly difficult to assess, URCA should take into account unlicensed or illegal providers of services, particularly VoIP offering. These operators have the ability to 'cherry pick' the more profitable services and reduce the ability of USPs to find USOs. While in some instances it is difficult to assess the relative market share of these operators, it is important to factor these operators in the discussion of the dynamics of the market.

Question 31:

Do respondents agree with URCA's proposal to establish separate USFs for each designated USP?

While the Funds can be separate, it is important that there is transparency and autonomy in the management of the Funds. BTC is of the preliminary view that there are some administrative costs that can be shared in the management of the Funds that would prevent duplication of efforts and contain expenditures. BTC recommends that the cost for administering the USFs should be capped as a percentage of the Fund. The cost of administering the Fund can fall below this cap or ceiling but should not exceed the cap.

Question 32:

Do respondents agree with URCA's proposal to appropriate a percentage contribution that equates to a licensee contribution to the Total Industry Total Revenues for the purposes of recovery of the net avoidable cost to the funding universal services, where Total Relevant Revenues for the calculation of contribution would exclude:

Revenues earned by the licensee for services other than those covered by their licence; and Revenues earned by the licensee from operations outside of The Bahamas?

In principle, BTC is in agreement with the revenue items listed being excluded. However, for the second revenue item, 'revenues earned by the licensee from operations outside of The Bahamas', is ambiguous. There are revenues which related to services governed by external entities, i.e. roaming contracts where the service can be provided within The Bahamas but governed by an external contractual relationship. There is need for greater clarity on this second revenue item.

Question 33:

Do respondents agree with URCA's proposal to establish a minimum threshold that exempts a licensee from paying the universal service charge where Total Relevant Revenues is less than B\$50,000?

BTC has no objection to this threshold of B\$50,000. However, it is important that URCA carry out the necessary due diligence to ensure that there is transparency of the relevant revenues for the smaller operators.

Question 34:

Do respondents agree with URCA's proposal to open separate accounts for universal service and to have these accounts audited and published annually?

BTC has no objections.

BTC is of the view that the Universal Service Funds should be administered by a separate legal entity outside of URCA. This separate legal entity will also have responsibility for investing any surplus funds and using the interest generated from investment of the surplus to defray the cost of operations.

Question 35:

Do respondents agree with URCA's proposal that the administrative and management cycle of the USF follows the calendar year and that any request for funding be submitted to URCA on an annual basis, within one month of the publication of relevant audited separated accounts but no later than eleven months following the end of the USP's financial period?

BTC has no objection to this URCA proposal.

Question 36:

Do respondents agree with URCA's proposal that the failure by a USP to provide sufficient robust information for URCA to be able to approve USO costs submitted as part of its claim should result in the whole process being cancelled for that particular year?

BTC objects to this proposal. This proposal runs counter to the earlier proposals which would have outlined the conditions under which a USP can access funding from the USF. With a set of criteria already established for accessing funds, this proposal seemingly introduces another layer in the approval process by providing URCA with the latitude to reject a claim if the information is not 'robust'. It is not clear in this context the definition of 'robust'.

Without prejudice to BTC's stated position above with respect to this proposal, the accumulation of unspent funds from previous final years should be used to help offset the contributions from USPs.

Question 37:

Do respondents agree with URCA's proposal that:

Contributor licensees be required to submit to URCA financial statement of the Total Relevant Revenues within four (4) months after the end of their financial year.

URCA issue on or before 30 days of receiving those financial statements, invoices to the contributor licensees specifying the quantum of their contribution to the relevant Funds; and

Contributor licensees be required to make the necessary payment before the expiration of 30 days to the relevant USF Account?

Given the proposed penalty for failure to pay by the expiration of the due date for payment, BTC is firmly of the view that 60 days after the issuance of an invoice ought to be the required expiration period for payment to the relevant USF Account.

Question 38:

Do respondents agree with URCA's proposal that the failure by a Contributor licensee to pay the required contribution on the due date should incur an annual interest rate of 3% above the prime lending rate, as notified by the Central Bank of The Bahamas, on all outstanding monies, until the full contribution is paid to the USF account?

BTC is of the view that the applicable interest rate of 3% above the prime rate appears quite excessive. URCA has provided no benchmark or basis for the use of 3% above the prime rate. It would be useful for URCA to provide the basis for 3% above the prime rate as the applicable interest rate.

Question 39:

Do respondents agree with URCA's proposal that the administrative and management costs be recouped through the contribution to the USF?

In principle, BTC has no objection to the administrative and management costs of the USF being recouped through the contribution to the USF. However, there has to be an incentive to contain costs. There should be targets that specify the upper limits of administrative and management expenses based on best practices. BTC has advocated that the Funds should be managed independent of URCA.

Question 40:

Do respondents agree with URCA's proposed working definition of Market Based?

The definition of market based as outlined in the Public Consultation provides conveys little information as to the range of options available for funding USO. BTC notes that market based like 'fixed telephony' and 'affordability' are not defined in the Communications Act but instead an attempt is made to define in the context of this Public Consultation.

Question 41:

Do respondents agree with URCA's proposal to consider various funding options inclusive of pure market-based, a mix of funding (market and USF) or pure Fund based funding?

BTC has no objections to URCA considering the various funding options.

In BTC's Response to the USO Public Consultation 2009, the company had indicated that it would consider what was termed at that time, tradable USO. So, having the option of providing the USO or paying another operator to provide the USO is an option that should be considered by operators.

Question 42:

Do respondents agree with URCA's proposal that the USPs be required to demonstrate that the disclosure of information specific to its USO, can cause competitive harm as a condition for URCA to treat the information as confidential?

BTC takes the position that in deciding whether to disclose information that the USP deems confidential, URCA takes into account the cost/benefit of such a release. If the concerns that any publication requirement would risk putting confidential information in the public domain and with limited benefits associated with such publication, URCA should weigh this consideration into the balance. Whilst the USP is asked to demonstrate that the disclosure of such information should be deemed confidential and not disclosed, it is also incumbent upon URCA to weigh into the balance the cost of disclosing such information against any perceived benefits to publicly disclosing such information.

Question 43:

Do respondents consider that URCA should establish a 'confidential ring' and if so, who should URCA consider as appropriate to be part of that 'ring'?

BTC is of the preliminary view that once information is deemed to be treated as confidential, the regulator, i.e. URCA should be the only entity with access to this data.

Conclusion

In this Public Consultation, there was no reference to the stage of development of the electronic communications sector in The Bahamas. This is important, as factors that can be weighed in the balance in the context of jurisdictions where the telecoms sector is fully liberalized may not necessarily be applicable in the case of The Bahamas which is still in the infancy stage of liberalization. This is particularly relevant where in this Consultation, the intangible benefits that were proposed as part of the net USO costs had little relevance to The Bahamas. While an EU framework provides a useful starting point, it is important to consider the stage of development of the electronic communications sector and the peculiarities of the operating environment in The Bahamas in looking to apply an EU framework.

BTC is firmly of the view that there should have been a discussion in this Public Consultation on the treatment of funds that are accumulated over time in the Universal Service Fund. The Fund is intended to reimburse USP for the net cost of providing USO and the administrative expenses associated with managing the Fund. Any funds accumulated over time, should be used to offset future contributions from USPs.

BTC notes that in this Public Consultation, there was no discussion relative to the *exceptions* to a USP obligation in providing USO services. In the United Kingdom, there is a provision within BT's

(British Telecoms) Licence (Condition 53.4) that provides exceptions to BT's obligation under the following conditions *inter alia*:¹

- Where there is no reasonable demand;
- The service provider would be exposed to undue risk to health or safety;
- Where the Director considers that it is not reasonably practicable in all the circumstances.

BTC has stressed in its response to this Public Consultation that in requiring BTC to provide public payphones within one (1) mile radius of a population centre or within twenty minutes walk, URCA had not taken account of the demand for these apparatus in some areas. It is important to take account of demand in some areas, otherwise it can lead to an inefficient use of resources.

Finally, BTC supports a dynamic approach to the review of Universal Service Obligations. In a number of jurisdictions, a review of Universal Service Obligations is undertaken every two (2) to three (3) years. It is important to periodically review whether services which were previously included as part of USO should be removed as the market for the provision of these services becomes more competitive. Similarly, there is a need to periodically review the effectiveness of USO funding mechanisms. In this Public Consultation, there was no discussion on review periods.

Reservation of Rights

BTC has addressed the issues but reserves the right to comment further on all issues and states categorically that the decision not to respond to any issue raised on this Consultation in whole or in part does not necessarily indicate agreement in whole or in part with URCA's position; nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.

**Legal, Regulatory and Carrier Services Division
The Bahamas Telecommunications Company Limited (BTC)
June 29, 2012**

¹ Roydhouse, Trevor B., Consumer Issues: Universal Service, Telecommunications, Competition and Consumers LLM Course, University of New South Wales Faculty of Law, Session 1, 2000.