



**FRAMEWORK FOR THE CLARIFICATION
AND IMPLEMENTATION OF EXISTING
UNIVERSAL SERVICE OBLIGATIONS (USO)
UNDER SECTION 119 AND SCHEDULE 5 OF
THE COMMUNICATIONS ACT 2009**

CONSULTATION DOCUMENT

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UTILITIES REGULATION & COMPETITION AUTHORITY

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1. INTRODUCTION

The universal provision of basic telecommunication services has long been a mainstay of communications policy in The Bahamas. It was enshrined in the *Telecommunications Sector Policy* (TSP) of July 2001 (as amended)¹ and guaranteed access to affordable basic telecommunications services for Bahamian residents.

The Communications Act, 2009 (Comms Act) which came into force on September 1, 2009, made legislative provision for the Minister to publish a new Electronic Communications Sector Policy (ECSP) setting out the strategic aims of the Government including the scope of universal service in The Bahamas. The ECSP, published on October 7, 2009, requires the Utilities Regulation and Competition Authority (URCA) to establish the necessary framework for implementing and monitoring the Government's policy on Universal Service (US) in the electronic communications marketplace. In guiding the establishment of that framework, URCA has had regard to s.119 and Schedule 5 of the Comms Act which designates US and universal service providers (USPs), and paragraph 54 of the ECSP which seeks to ensure that no period exists between the expiration of existing obligations under the Telecommunications Act 1999 and the introduction of any new US obligations on licensees.

The purpose of this consultation is therefore, to invite public input on URCA's proposed framework for the implementation of the existing USO. In particular, this document sets out URCA's proposals with respect to, amongst other things:

- Clarification of the US obligations;
- Addressing any ambiguities that exist with the US provisions;
- Determining core principles for calculating the cost of USO and measuring unfair burden; and
- Establishing mechanisms for funding universal service in accordance with s.44 of the same Act.

In formulating this framework for USO implementation, URCA remained mindful of the public consultation conducted by the Committee for the Privatisation of Bahamas Telecommunications Company Ltd. (BTC) in 2009. While URCA recognized that the outcome of that consultation was never concluded, and further that URCA is not bound by any findings of that Committee, URCA has considered relevant comments from that consultation in establishing the framework set out in this document.

¹ The TSP was amended in October 2002 and was primarily referred to in governance of the Telecommunications Sector in conjunction with the Telecommunications Act, 1999.

1.1 Responding to this Consultation Document

Responses to this consultation document should be submitted to URCA by 5:00 p.m. on 29 June 2012. Persons may send their written responses or comments to the Director of Policy and Regulation, either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau; or
- by mail to P.O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242) 393-0153; or
- by email, to info@urcabahamas.bs.

URCA reserves the right to make all responses available to the public by posting responses on its website at www.urcabahamas.bs. If a response is marked confidential, reasons should be given to facilitate evaluation by URCA of the request for confidentiality. URCA may publish or refrain from publishing any document or submission, at its sole discretion.

1.2 Next Steps

URCA will carefully consider all comments and submissions received on the consultation on or before the deadline date specified above. At the end of this consultative period, URCA will:

- review responses and publish a Statement of Results (SoR) on the consultation; and
- publish an Implementation Plan for US in The Bahamas (see Section 3.8 below for detail).

1.3 Structure of Document

The remainder of this document is structured as follows:

- Section 2 provides an overview of the legislative and policy context for universal service in The Bahamas;
- Section 3 details the designated Universal Service Obligations (USO);
- Section 4 proposes principles for assessing the costs of USO and unfair burden;
- Section 5 proposes criteria to determine entitlement to USO Funding;
- Section 6 proposes funding mechanism(s) for USO; and
- Section 7 presents the treatment of confidential information.
- Annex 1: List of the Consultation Questions.

2. LEGISLATIVE AND POLICY CONTEXT FOR UNIVERSAL SERVICES

The legislative and policy context for the Electronic Communications Sector (ECS) in the Commonwealth of The Bahamas have undergone significant change since 2009 when a new legislative framework governing the ECS came into effect through the:

- Communications Act, 2009 (“the Comms Act”);
- Utilities Regulation and Competition Authority Act, 2009 (“the URCA Act”);
- Utilities Appeals Tribunal Act, 2009 (“the UAT Act”); and
- Electronic Communications Sector Policy (“ECSP”).

The URCA Act established URCA as the converged sector regulator and competition authority for electronic communications networks and carriage services.² The Comms Act grants URCA powers to regulate licensees designated to be providers of universal services. The ECSP, which by s.6 of the Comms Act has legislative effect, addresses the issue of universal service at paragraph 54 and requires URCA to ensure that no person in The Bahamas who today benefits from electronic communications services provided under current USO and similar arrangements is left without service, and that the services offered are no less than what is currently provided.

Under Part XIX of the Comms Act both the Bahamas Telecommunications Company Ltd. (“BTC”) and Cable Bahamas Ltd. (“CBL”) have been designated universal service providers (USPs) with the following respective obligations:

BTC

- Basic telephony services (inter- and intra-island fixed voice) to all populated areas³;
- Public access to pay apparatus (payphones of all types – coins and cards: (credit/debit/prepayment); and
- Basic dial-up internet services (56kbps⁴) to all populated areas and free of charge to the following specified institutions:
 - public and church operated schools;
 - public libraries;
 - public hospitals and public medical clinics;
 - senior citizens homes registered with URCA;

² This includes telecommunications, internet, broadcasting (including pay TV), and radio frequency spectrum.

³ “Populated area” means groups of permanent inhabited dwellings comprising ten or more households [s. 2, Comms Act].

⁴ Kbps - Kilobits per second

- orphanages registered with URCA;
- community centers registered with URCA;
- the College of The Bahamas;
- the Bahamas Technical and Vocational Institute;
- the Bahamas Hotel Training College; and
- Eugene Dupuch Law School

CBL

- Basic television services (six channels inclusive of ZNS-TV⁵ and the Parliamentary channel) to all populated areas and free of charge to the specified institutions (identified above); and
- Internet services to all populated areas and free of charge to the specified institutions.⁶

In implementing those obligations the designated USPs are entitled to apply to URCA for “*one of more of the following* -

- (a) *funding from a universal service fund; and*
- (b) *such other means of funding including market-based means, as may be determined by URCA. [s.43(1)]”*

In considering *all applications* for funding, URCA, “*...shall determine whether the licensee is entitled to funding*” [s.43(2)].

When considering applications for funding, URCA is not limited in its consideration of available market-based options. However, the Comms Act specifies the high-level approach to administering the funding of USOs, the universal services that may be funded from a universal service fund (USF) and the sources of contribution to the USF. The sources of contribution to the USF, relevant to this consultation,⁷ may include:

- any money appropriated by URCA for universal service [s.44(1)(a)];

⁵ The Broadcasting Corporation of The Bahamas’s (BCB), Zephyr Nassau Sunshine (ZNS).

⁶ The Specified Institutions are those previously identified in reference to BTC’s Dial-up Internet obligation.

⁷ Section 44 The Comms Act also states that monies that may be obtained from the two following sources are to be paid into the Fund:

- Money contributed by the Government specific to the purpose of funding universal services or rendering electronic communications infrastructure and services universally available, affordable and accessible;
- Grants, contributions or loans from international organizations or donors specific for the purpose of funding universal services.

URCA is however minded that these sources of funds may not necessarily be realized and the approach to allocation between the two USFs would be beyond the scope of this consultation.

- charges levied on licensees or content providers [s.44(4)].

Section 44(3) of the Comms Act mandates URCA to administer the USFs. In administering the USF, URCA **may only** apply those monies collected for the USF *“to the installation and maintenance of networks and the provision of universal services in an area where the gross avoidable cost of providing the universal service exceeds the revenues derived from those services”*. There is also a requirement on URCA when establishing and administering the USF to *“specify whether the funds shall be applied to all universal service obligations or whether only certain universal service obligations shall be included or excluded from the funds under which the designated universal service providers may apply for funding”*.⁸

URCA may also, pursuant to section 44(4) of the Comms Act, exempt any licensee or content provider from paying the charges levied on those licensees/providers if the relevant turnover of those licensees/providers from a similar or related sector is below a designated threshold or if those licensees/providers do not operate in a similar or related sector to the universal service to which the fund relates.

⁸ Section 44(2) of the Comms Act

3. DESIGNATED UNIVERSAL SERVICE OBLIGATIONS

In this Section, URCA sets out its proposals in respect of the implementation of the existing universal service obligations, which are as follows:

BTC

- Affordable basic telephony services to all populated areas;
- Affordable basic dial-up internet services to all populated areas;
- Affordable public access to pay apparatus; and
- Basic dial-up internet services to specified institutions;

CBL

- Affordable basic television services to all populated areas and specified institutions; and
- Internet services to all populated areas and specified institutions.

URCA also provides in this Section required clarification of the specific universal services and the obligations imposed on specific licensees by s.119(1) of the Comms Act and Paragraph 54 of the ECSP. For ease of reference in clarifying each of the specific universal services and obligations above, URCA has capitalised each of the obligations mentioned in s.119(1) and Schedule 5 of the Communications Act.

3.1 Provision of Affordable Basic Telephony Services

Section 119(1) provides that *“on this Act coming into force the existing licensees listed in Schedule 5 shall be designated as universal service providers ... in respect of one or more of the following universal service obligations - (a) affordable basic telephony services to all populated areas”*. However, URCA notes that Schedule 5 in designating BTC as an existing licensee for the purpose of s.119(1), lists *“Bahamas Telecommunications Company for - ... (iii) basic telephony services to all populated areas ...”* URCA notes the inconsistency between the two provisions, and considers that s.119(1)(a), being the operative provision in the Comms Act, should prevail. URCA therefore considers and will interpret the obligation to provide Basic Telephony Services imposed on BTC as it is stated in s.119(1)(a), that is:

“the provision of affordable basic telephony services to all populated areas”

“Basic Telephony Services” are defined in Schedule 5 of the Comms Act as *“the provision of fixed voice telephony services including local and inter-island calls”*. URCA notes that the definition does not expressly address the provision of “access”, which is required in order to provide “calls”. URCA notes that the wording of the definition which refers to *“... voice telephony services including...”* is not exhaustive, and URCA, for the avoidance of doubt, will interpret

“Basic Telephony Services” to include access. URCA therefore proposes the following definition of “Basic Telephony Services”:

“the provision of fixed voice telephony services including access and local and inter-island calls”

URCA also notes that the term “fixed voice telephony” is not defined in the Act and may require further clarity. URCA therefore proposes for clarity to adopt the following definition of “fixed voice telephony”⁹:

“a system of telecommunications in which telephonic equipment is employed in the transmission of speech or other sound between points, with or without the use of wires.”¹⁰

This definition is sufficiently technologically neutral to allow the provision of fixed voice telephony access and services over all forms of fixed (wire or wireless) telecommunications networks whether those networks are Circuit-Switched or Packet-Switched Based or any variant thereof.

Question No. 1:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 2:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

⁹ URCA also considered the definition used by the European Commission on fixed voice telephony. See http://www.cullen-international.com/cullen/projects/balkan/def_definitions_ec_questionnaire.pdf

¹⁰ Adapted from a definition found at Dictionary.com: <http://dictionary.reference.com/browse/telephony>

3.1.1 Scope of Basic Telephony Services

The universal service obligation requires provision of Basic Telephony Services comprising access, and intra and inter-island calls to all populated areas. URCA recognizes that its proposed definition of fixed voice telephony may be sufficiently broad to include call management services or features¹¹, however, URCA does not intend that these services/features be included within the scope of the universal service obligation to provide Basic Telephony Services at this time, as international experience suggests that these services and/or features are typically considered non-basic or premium services.

Question No. 3:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

URCA notes that the obligation requires that the provision of Basic Telephony Services be "affordable".¹² URCA proposes that the burden should rest upon the designated USP to satisfy URCA that any charge imposed by the USP for the service is affordable. The following list sets out examples of the factors URCA may consider (without limitation) in assessing the affordability of the Basic Telephony Services:

- Subscription levels;
- Size of local calling area;
- Household income;
- Cost of living; and
- Expenditure on service as a percentage of household income in different groups.

¹¹ Call management services are those standalone calling features that customers may select to manage their communications experience. These services include BTC's Customer Local Area Signaling Service (C.L.A.S.S) and CBL's Revoice Features.

¹² For a useful discussion on affordability see:
http://transition.fcc.gov/wcb/tapd/universal_service/fcc97157/sec05.html#N_258

Question No. 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 regards to the factors listed?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position. Respondents may also suggest additional factors that URCA may consider.

3.1.2 Designated USP for Basic Telephony Services

BTC will retain its designation as the USP for the provision of Basic Telephony Services in The Bahamas.

3.2 Provision of Internet Services

That there are two universal services specified in the Comms Act which relate to the provision of internet services, these are:

- *“Basic Dial-Up Internet Services”;* and,
- *“Internet Services”.*

URCA notes that these obligations are imposed by Schedule 5 of the Comms Act on existing licensees as follows:

- “(a) Bahamas Telecommunications Company for –*
- (i) basic dial-up internet services to all populated areas;*
 - (ii) basic dial-up internet services free of charge to specified institutions; ...”*
- “(b) Cable Bahamas Limited for –*
- (ii) internet services to all populated areas; ...*
 - (iv) internet services free of charge to specified institutions.”*

URCA notes that BTC’s *“Basic Dial-Up Internet Services”* is defined in paragraph (2) of Schedule 5 as *“the provision and use of internet connections capable of 56kbps transfer speeds”*. URCA understands that *“dial-up”* is a specific technology for the provision of narrowband services which is specific to Public Switched Telephone Networks (PSTN). In URCA’s view the definition of Basic Dial-Up Internet Services is adequate for the purposes of implementing that universal service in The Bahamas.

URCA does not propose to specify a minimum throughput speed for USO Internet Services by CBL. In URCA's view the provision of Internet Services by CBL, irrespective of throughput, fulfils the current Internet Services USO.

Question No. 5:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 6:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

URCA notes from s.119(1)(b) of the Comms Act that the general universal service obligation for dial-up (as contrasted with the obligation to provide Internet service free of charge to specified institutions) is described as: "*affordable basic dial-up internet services to all populated areas*". URCA proposes that the burden should rest upon the USP to satisfy URCA that its rates for these services are affordable. The following list sets out examples of the factors URCA may consider (without limitation) in assessing the affordability of a service:

- Subscription levels;
- Size of local calling area;
- Household income;
- Cost of living;
- Expenditure on service as a percentage of household income in different groups.

No affordability requirement has been established in the Comms Act regarding Internet Services. URCA is also aware that currently Internet Services are not classified as a price regulated service and URCA will continue to monitor that market to ensure that the pricing behaviour by the SMP operator, CBL, is appropriate for this universal service.

3.2.1 Designated USPs in Internet Services

CBL will retain its designation as the USP to provide Internet Services to all populated areas and free of charge to specified institutions. BTC will retain its designation as the USP to provide Basic Dial-up Internet Services, to all populated areas and free of charge to specified institutions.

3.3 Provision of Public Access to Pay Apparatus

URCA notes the definition of ‘public access to pay apparatus’ as set out in Schedule 5 of the Comms Act: -

“the provision and maintenance of telephones enabled for the provision of basic telephony services that are available to the general public and for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes”.

In URCA’s view, the provision of Public Access to Pay Apparatus requires URCA to put in place an universal access type initiative that makes access to basic telephony available on a shared (public access) basis as far as reasonably practical to those less populated areas (i.e., areas with less than 10 households) and un-served individuals (i.e., persons without Basic Telephony Services at their homes). A review of the international experience suggests that in some jurisdictions various regulatory measures are imposed which render access to Basic Telephony Services in terms of the walking or travelling distance to a public payphone¹³ or a public payphone within a certain distance of everyone¹⁴ or as a public payphone for every settlement or community over a given population size.¹⁵

3.3.1 Designated USP in Public Access to Pay Apparatus

BTC will retain its designation as the USP to provide Public Access to Pay Apparatus in The Bahamas.

3.3.2 Scope of the Public Access to Pay Apparatus USO

URCA notes that the obligation requires “public access” to these pay apparatus and is of the view that the scope of this USO must therefore ensure that the apparatus is within easy reach of

¹³ Russia for example, defines universal access as the establishment of a minimum of one working payphone within one hour’s walking distance of every inhabited community. While Peru, defines universal access in terms of the rural population need to travel only 5.6 km to reach a public payphone. In South Africa it refers to a phone within 30 minutes travelling distance.

¹⁴ 20 km in Burkina Faso.

¹⁵ It’s 500 people in Ghana, while in Brazil it’s 400.

places where the public in The Bahamas can reasonably be expected to live, traverse and congregate. URCA therefore considers that public pay telephone apparatus must be provided either within, or within a specified walking distance of, each populated area, and within each public place in The Bahamas (e.g., shopping malls and shopping centres, public parks, public buildings, Specified Institutions¹⁶, ports of entry, tertiary educational institutions, etc.).

Given that each of the islands and cays of The Bahamas vary in their respective geographic size, population size and distribution, URCA proposes to set the specified walking distance as within twenty minutes walking distance (equivalent to one (1) mile at an average walking speed of 3.1 mph),¹⁷ from a populated area to a pay apparatus or from one pay apparatus to another within the same populated area). For completeness, URCA's proposal does not apply to private and uninhabited islands and cays.

URCA proposes to require BTC to provide a minimum number of public pay telephone apparatus in each public place. The specific requirement will be discussed and agreed between URCA and BTC subject to considerations of need (based on the size and popularity of the specific location) and feasibility.

URCA is aware that public pay apparatus' are not within the SMP market for ex ante regulation and is therefore not classified as price regulated services. URCA will however monitor that market to ensure that the pricing behaviour by the USP, BTC, is appropriate for this universal service.

Question No. 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 a pay apparatus, or from one pay apparatus to another within the same populated area?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

¹⁶ Location of public pay apparatus at these institutions may require approval from the relevant public/governmental agency or Ministry.

¹⁷ The Naysmith's Rule which uses 3.1mph as the standard speed for a normal walking speed, was utilized by URCA to derive the proposed distance.

Question No. 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 educational institutions, etc.?)

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

3.4 Provision of Basic Television Services

Section 119(1)(e) of the Comms Act, establishes the following as a universal service obligation:

"affordable basic television services to all populated areas and specified institutions."

Schedule 5 designates CBL as the provider of this USO, and defines it as *"the provision of a multichannel television service comprising six channels, including ZNS Channel 13, and the Parliamentary channel"*.

URCA is aware of stakeholders' comments on the television service USO in an earlier consultation in 2009. URCA notes the arguments advanced by specific parties in that consultation for specifying a *must carry* obligation rather than a Basic Television Services USO. URCA does not agree that a *must carry* obligation would be adequate to address the issues that the USO is designed to address. Generally, *must carry* obligations require a licensee that owns and operates an electronic communications broadcast network (such as a cable television network) to transmit a licensed local free-to-air television broadcaster over its network, possibly at no expense to the local broadcaster.

A *must carry* obligation does not in and of itself imply that the service is offered free of charge or at an affordable rate to the public by the licensed electronic communications broadcast network, nor does it address the issue of reach to remote and underserved parts of the country. In most instances the local channel is bundled with other re-transmitted channels and offered at a price to end users. URCA notes that the Comms Act addresses the issue of *must carry* obligations as a matter for possible inclusion in a Code of Practice for broadcasters and is a separate issue from USO.¹⁸

¹⁸ Section 53(2)(i) of the Comms Act.

In URCA's view, affordable access to Basic Television Services fulfills the objectives at s.4(b)(i) and (vi) of the Comms Act.

URCA acknowledges the existing constraints faced by the Broadcasting Corporation of The Bahamas (BCB) as the only free-to-air television broadcaster and the resulting status and limitations of free-to-air television broadcasting in The Bahamas. Given the current and possible future of free-to-air television in The Bahamas, URCA is of the view that there is a real need for continued universal provision of Basic Television Services in The Bahamas.

URCA is aware that CBL's Hybrid Fiber Coaxial (HFC) network does not currently reach all populated areas within The Bahamas. However, URCA notes that CBL is currently offering a package of six television channels throughout specific communities of The Bahamas¹⁹ which in URCA's opinion appears to satisfy the Basic Television Services USO requirement within those islands.

In relation to islands that are covered by CBL's HFC network, URCA notes that CBL offers its SuperBasic package consisting of 54 channels²⁰ (currently marketed as RevTV Prime) in the islands of Abaco, Andros, Berry Islands, Bimini, Eleuthera, Exuma, Grand Bahama, Inagua, Long Island, New Providence and San Salvador.²¹ URCA notes that from the perspective of a minimum channel offering the SuperBasic/RevTV Prime package meets the requirements of the Basic Television Services USO requirement in the aforementioned islands.²²

URCA therefore considers that there might be, both in respect of reach to all populated areas in The Bahamas, as well as in respect of affordability within the areas covered by CBL's HFC network, aspects in respect of which the existing universal service obligation to provide Basic Television Services remains unfulfilled.

URCA notes from s.119(1)(e) of the Comms Act that the Basic Television Services provided to all populated areas and specified institutions under this obligation must be "affordable". URCA considers that the burden should rest upon the USP to satisfy URCA that its rates for these services are affordable. The following list sets out examples of the factors URCA may consider (without limitation) in assessing the affordability of a service:

¹⁹ These communities are: (i) Cat Island - Arthur's Town and The Bight ; (ii) Moores Island; (iii) Farmer's Cay Exuma; (iv) Grand Cay, Abaco; (v) Guanna Cay; (vi) North and South Andros; (vii) Crooked Island; (viii) Acklins Island; (ix) Mayaguana; (x) Grand Bahama (Bassett Cove) – Sweetings Cay, Macleans Town, Water Cay, Walker's Cay; (xi) Ragged Island; (xii) Rum Cay.

²⁰ In isolated, less populated islands where signal delivery is served via satellite, subscribers may receive 48 channels.

²¹ URCA's Preliminary Determination Types of Obligations on Cable Bahamas Ltd. Under S.116(3) Communications Act, 2009 – ECS 19/2009 at page 65.

²² URCA is conscious that some low-income households could find the current price of B\$30 per month unaffordable.

- Subscription levels;
- Size of local calling area;
- Household income;
- Cost of living;
- Expenditure on service as a percentage of household income in different groups.

3.4.1 Designated Basic Television Services USP

CBL will retain its designation as the USP for Basic Television Services in The Bahamas.

3.4.2 Scope of the Basic Television Services

As stated in Schedule 5 of the Comms Act, the Basic Television Services package must be a multichannel service comprising, at a minimum, six channels, including ZNS Channel 13 and the Parliamentary channel.

URCA is of the view that the additional channels provided may be any four from within CBL's SuperBasic/RevTV Prime package. While URCA does not propose to specifically identify the additional four channels, URCA is of the view that those channels should be informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment.

Although costs would ordinarily be addressed later in this consultation paper, URCA feels that it is appropriate here to highlight an important principle relative to the issue of access costs as they pertain to the Basic Television Services USO (i.e., minimum six channels). URCA is of the preliminary view that total access costs should not be borne solely by the Basic Television Services USO multichannel offering, given that other television services and/or data offerings would be provided over the same access connection. Given CBL's SMP status in the pay television market, URCA will review the proposed pricing for the new Basic Television Services package within the context of the Retail Pricing Rules and the Individual Operating Licence under which CBL operates. This is extremely important given that URCA considers that the Basic Television Services USO package should be price regulated by URCA. In its review of CBL's pricing proposal, URCA will seek to ascertain the reasonableness and affordability of the proposed price. The proposal must be a multi-channel service comprising, at a minimum, six channels, including ZNS Channel 13, and the Parliamentary channel and state:

- the level of any initial connection or minimum subscription fee, and deposit; and
- other terms and conditions of the service, including contract period, penalty for late payment and disconnection policy.

Question No. 9:

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

Respondents should detail their responses in full and should, where possible, suggest which channels that, adhering with URCA’s proposed position, might be included in the basic TV-USO.

Question No. 10:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

3.5 Specified Institutions

URCA notes the USP as set out in Schedule 5 of the Comms Act to provide the following universal services at s.119 of the Comms Act to “Specified Institutions”:

BTC

- Basic Dial-Up Internet Services free of charge to Specified Institutions;

CBL

- Affordable Basic Television Services to Specified Institutions; and
- Internet Services free of charge to Specified Institutions.

URCA further notes the meaning attributed to “Specified Institutions” as set out in Schedule 5 of the Comms Act, that are subject to the following clarification:

- **Public and church operated schools** would mean those public and church operated schools registered with the Ministry of Education;
- **Public libraries** would mean those public libraries registered and/or operated with the Ministry of Education;

- **Public hospitals and public medical clinics** would mean those public hospitals and clinics registered and/or operated by the Ministry of Health and/or the Public Hospital Authority;
- **Senior citizens homes** would mean those senior citizens homes registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development; and
- **Orphanages will** mean *children's homes* registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development.

URCA cautions that it will not seek to verify the authenticity of Specified Institutions as defined in the Comms Act and clarified above. To this end, URCA will rely on those Government ministries/departments and/or other agencies that are responsible for the management and oversight of the Specified Institutions. URCA will acquire from the relevant ministries /departments and agencies the list of Specified Institutions under their respective purview and will establish, in accordance with s.4(2)(1) of the URCA Act, a register of Specified Institutions. URCA proposes to update and publish the Specified Institutions register semi-annually on URCA's website.

Question No. 11:

Do respondents agree with URCA's proposal that designated Specified Institutions should be defined as follows:

- **Public and church operated schools** would mean those public and church operated schools registered with the Ministry of Education;
- **Public libraries** would mean those public libraries registered with the Ministry of Education;
- **Public hospitals and public medical clinics** would mean those public hospitals and clinics registered and/or operated by the Ministry of Health and/or the Public Hospital Authority;
- **Senior citizens homes** would mean those senior citizens homes registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development; and
- **Orphanages will** mean *children's homes* registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development.

Question No. 12:

Do respondents agree with URCA's proposal that URCA establish a Specified Institutions Register and update and publish that Register semi-annually on its Website?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

3.5.1 Provision of Services to Community Centers²³

In this Section, URCA sets out a proposed working definition for Community Centers and provides a list of criteria for determining whether Community Centers are eligible for benefits under the universal service programme as Specified Institutions.

Community Centers are amongst the list of Specified Institutions that must be registered with URCA to be eligible for universal service.²⁴

However, the term “community centers” has not been defined in the Comms Act. URCA also understands that there is no government ministry or agency with responsibility for designating, licensing or registering community centers. It appears to URCA that entities exist within some communities that have been loosely defined (or considered) or have designated themselves as community centers. This understanding is derived from requests URCA has received for the registration of Community Centers under paragraph (2)(e)(vi) of Schedule 5 of the Comms Act in circumstances where the requesting parties were unable to provide proof of any official designation.

URCA recognizes the urgent need to provide a working definition of Community Centers in order to facilitate proper and timely implementation of the USO policy and minimize abuse of this very important social policy. URCA also considers it necessary to specify a minimum set of criteria to qualify as Community Centers for the universal services that Specified Institutions are eligible to receive from the USPs designated to provide same (see Section 3.5 above).

Having investigated the definitions and/or concept of community centers in the USA, Canada, New Zealand²⁵ and the UK, URCA proposes the following working definition:

“Community Centers means a building, structure or part thereof, operated by or on behalf of a governmental or public authority or an incorporated not-for-profit organisation, which facility is accessible to all residents of a locality or community in which the facility is established and is utilized by the residents of that locality or

²³ In this consultation, URCA treats separately its discourse on Community Centers from that of specified institutions even though Community Centers are a subset of specified institutions. URCA’s approach to discuss community centers is taken from a presentation perspective given the nature of the discourse on Community Centers.

²⁴ The other Specified Institutions are Senior Citizens Homes and Orphanages.

²⁵ URCA had regards to the New Zealand’s Office for the Community and Voluntary Sector adaption of the Johns Hopkins Centre for Civil Society Studies description of organizations that comprise the community and voluntary sector. See <http://www.ocvs.govt.nz/about-the-community-and-voluntary-sector/definition-of-the-sector/index.html>

community for the provision of community activities such as, but not limited to, recreation, arts, crafts, museums, libraries, social and charitable activities, group activities, social support, public information, educational, developmental and cultural services and activities, and other related purposes which is open for a minimum of eight (8) consecutive hours each day.”

Question No. 13:

Do respondents agree with URCA’s proposed working definition of Community Centers?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

URCA’s proposal incorporates the principles of non-discrimination and transparency. In doing so, URCA seeks to ensure that for the purposes of the Comms Act and the ECSP, all members of the community, inclusive of the differently-abled²⁶ or with specific types of functional impairment (Visual, Hearing and certain Physical Impairment), have access to universal services. Additionally, URCA’s definition would provide USPs with assurance that its recognition of Community Centers is sufficiently neutral and can withstand public scrutiny.

In providing the necessary assurance to USPs and the required inclusiveness to members of the community, URCA is proposing that the operators of a Community Center, as defined above, should provide **all** of the following information to both URCA and the USP responsible for providing any universal services to qualify for designation as a Community Center and eligibility as a Specified Institution for the specified universal services, namely details of:

- The exact location, access policy, amenities and its hours of operation;
- List of the types of community and developmental programs, activities or services currently offered at the Center;
- The benefits (actual and intended, current and future) provided by the Center to the community where the Center is located;
- Evidence to demonstrate the availability (if any) of Information and Communications Technology (ICT) Services, and a schedule of any computer literacy and other ICT courses offered at the Center; and
- Facilities (if any) to accommodate the differently-abled or those members of society with specific functional impairments such as Visual Impairment, Hearing Impairment, and certain types of Physical and Cognitive Impairment.

²⁶ The term “differently-abled’ is used by URCA to refer to those members of society who are conventionally referred to as being disabled, namely, the blind and visually impaired, the deaf and dumb, and those who are physically and mentally handicapped.

Question No. 14:

Do respondents agree with URCA's proposal that a Community Center 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?

- *The exact location, amenities and its hours of operation;*
- *List of the types of community and developmental programs, activities or services currently offered at the Center;*
- *The benefits (actual and intended, current and future) provided by the Center to the community where the Center is located;*
- *Evidence to demonstrate the availability (if any) of Information and Communications Technology (ICT) Services, and a schedule of any computer literacy and other ICT courses offered at the Center; and*
- *Facilities (if any) to accommodate the differently-abled members of society (e.g., ramps etc.).*

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

URCA will review and publish annually the above requirements to be met to fulfill the definition of Community Centers. Community Centers will need to demonstrate each year they meet these requirements to both URCA and the USP from which they are seeking universal services. USPs are entitled to check through on-site visits and satisfy themselves whether the applicant truly meets the above criteria and conditions for qualification as a Community Center, if satisfied, they shall provide the universal services as requested. Should the USPs determine that the institution does not meet the requirements of Community Centers, both USPs and Community Centers should put their respective cases to URCA for URCA's final determination. Through this process, URCA will keep on its website a register with the list of all Specified Institutions including Community Centers that are receiving universal services from USPs.

Question No. 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?

Respondents should detail their responses in full.

3.6 Provision of Services to Differently-abled Users

URCA considers that the existing Universal Services are equally applicable to all persons in The Bahamas, inclusive of the differently-abled or those members of the society with specific functional impairment. To facilitate the provision of Basic Telephony Services to this group, URCA notes that this will require the provision of specialized services (e.g., minicom relay services, etc.) and specialized equipment (e.g., restricted vision phones, inductive couplers, etc.). URCA will continue to assess the state of technology and relevant costs from time to time to determine whether the implementation of other USOs should be extended to the differently-abled

URCA's research reveals that the provision of telephone apparatus for Basic Telephony Services to:

- the blind and visually impaired may have the following features:
 - Talking caller identification ;
 - Large print, easy-to-read character display
 - Speed dialing capabilities/one-touch dial memory.

- the deaf and hearing impaired may have the following features:
 - Text telephone (TTY) capabilities;
 - Voice and tone control for incoming and outgoing amplification of calls;
 - Bright ring flasher alert for incoming calls;
 - Amplified ringer for incoming calls; and
 - Hearing aid compatible handset.

- Persons with limited physical mobility may have following features:
 - Light weight handset;
 - Hands-free handset or speakerphone capabilities;
 - One-touch dial memory;
 - Bright ring flasher alert for incoming calls.

URCA intends to engage organizations representing the differently-abled in The Bahamas (e.g., Bahamas Alliance for the Blind and Visually Impaired, Bahamas Association of the Physically Disabled, etc.) to develop a reliable appropriate register, in accordance with s.4(2)(f) of the URCA Act, of those differently-abled members of the society which register can be used by USPs to identify the differently-abled members of the society who can benefit from these specialized services and equipment. As part of this consultation, URCA invites members of the public and institutions representing the differently-abled to submit for URCA's consideration the types of telephones and telephone features that they would consider appropriate to ensure Basic Telephony Services are provided to the differently-abled.

Question No. 16:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

3.7 Clarification of Populated Areas

URCA notes that several of the USOs defined in the Comms Act require service to all “populated areas” in The Bahamas. The Comms Act defines the term populated area as a “*group of permanent inhabited dwellings comprising ten or more households*”. URCA considers that it should clarify any vague or imprecise terms in this definition in the following respects:

- The term “populated areas” does not specify how URCA or an USP determines whether houses are part of a group or not. URCA’s research reveals that while international precedents exist to specify universal services to towns, communities or villages of inhabitants of a given size [Mexico (400), Brazil (400) and Ghana (500)], those same countries do not specify how the clustering of the towns/communities/villages is agglomerated. URCA’s research however reveals that towns, etc., are an agglomeration of people, which is reflected by a demographic mass (minimum range of inhabitants

depending on the country)²⁷ and a physical proximity threshold that defines geographic continuity which when specified, is typically between 55 yards or 220 yards.²⁸ While the Comms Act specifies the minimum demographic mass (10 households), it is silent on the geographic proximity of those households. URCA recognizes that the manner in which households in The Bahamas are agglomerated makes it difficult to clearly define an appropriate geographic proximity. While URCA considers the presence of traditional or commonly (within the group) accepted community ties as a more appropriate measure, URCA notes that this might be difficult to assess in practice. Cognizant of measurement limitations and recognizing that physical proximity is generally country specific,²⁹ URCA proposes that in the context of the geographic and population patterns in The Bahamas, to adopt a maximum distance of 220 yards between ‘permanent inhabited dwelling’ for the purposes of defining “populated area”.

- The term “permanent inhabited dwellings” does not specify what is meant by the words “permanent” and “dwelling”. URCA construes this term as meaning that:
 - the dwellings must be of a non-transient nature, thereby excluding chattel-houses, temporary or transportable structures;
 - The structures must be dwellings or houses, thereby excluding hotels, vacation resorts, businesses and other commercial premises; and
 - The dwelling must be inhabited, thereby excluding vacant, partially constructed or abandoned structures.

Question No. 19:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

²⁷ Ireland - 50 occupied households, Scotland - 500 inhabitants, Belgium, Denmark, Finland and Sweden – 200 inhabitants, Austria – 500 inhabitants, France – 50 inhabitants up to 1982

²⁸ “Towns of Europe: to each country its definition”. Jean-Pierre Le Gléau, Denise Pumain and Thérèse Saint-Julien” INSEE Studies No.6, November 1997. (Originally published as “Villes d’Europe” à chaque pays sa définition” Economie et Statistique, no.294-295, 2996-4/5.

²⁹ France, Denmark, Sweden, Finland and Austria – 220 yards, England and Scotland 55 yards.

Question No. 20:

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

- *Non-transient in nature;*
- *residential (non-commercial) and*
- *inhabited (not vacant, partially constructed or abandoned).*

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

3.8 Implementation of the Universal Service Obligations

URCA is cognizant that the current provision of universal services by both BTC and CBL may fall short of the obligations to service "all populated areas" set out in the Comms Act, and therefore as part of the implementation process URCA must consider mechanisms for improving the extent to which the USPs provide services, with the ultimate goal being the provision of all USOs in full accordance with the established universal service provisions. Further and as part of the implementation process, an USP may at the end of this consultation demonstrate to URCA that those universal services that they currently provide and are subject to an affordability requirement, are affordable.

URCA has therefore, in parallel with the consultation on this document engaged the USPs to commence its assessment of existing universal service provision as required by the s.119(1) and Schedule 5 of the Comms Act. This engagement exercise will be conducted on a one-on-one basis with each USP, following which URCA will consider the appropriate public consultation method to be undertaken.

4. ASSESSMENT OF USO COSTS

Section 43 of the Comms Act require URCA to establish appropriate funding mechanisms to which USPs can apply for funding when implementing their respective USOs. Those mechanisms may include market-based initiatives [(43(1)(b))] or an USF [43(1)(a)]. Section 43(2) of the Comms Act required URCA to consider each application for funding by an USP to determine whether that USP is eligible for funding and if so, to determine the most appropriate type of funding mechanism(s). In considering each application for funding, URCA must first determine if there is a positive net USO cost. This chapter sets out URCA’s proposed methodology to calculate the net cost of the USO to the USPs.

4.1. Calculation of the USO Cost

In determining whether a positive net USO cost exists, URCA will, in accordance with s.44(3) of the Comms Act, determine if the incremental cost of providing the universal services exceeds the revenues derived from those services. The calculation of this difference corresponds to the “Net Avoidable Cost” approach (NAC), which is widely accepted as the appropriate way to measure the net cost of the USO. Such evaluation is carried out with respect to the current provision of the USO. As a result, the NAC does not consider future additional costs associated with meeting aspects of the USO that are not currently fulfilled by the USP. Additional investments by the USP to meet its USO are rather incorporated into future calculations of the net USO cost after they are incurred.

Given that the data required to implement the NAC approach are held by the USPs, URCA is of the view that the calculation of the USO cost under the NAC approach is best carried out by the USP. However, URCA will set, as a result of this Consultation Process, the detail of this methodology and principles, which the USP will have to follow in calculating NAC. The data to be used in the model for the estimation of those costs will be independently audited or otherwise verified by URCA.

4.1.1 Methodology for Calculating the Cost of the USO

The Net Avoidable Cost (NAC) approach measures the incremental cost that would be avoided in the long run if the requirement for meeting the USO was lifted and the USP was allowed to discontinue serving unprofitable customers and providing unprofitable universal services; net of the revenues the USP earns from those customers and services.³⁰ In URCA’s view and consistent

³⁰ The approach under is the NAC is to identify each loss-making segment or part of product/ service which the USP is obligated to offer as part of the USO. The aggregated sum of these identified losses corresponds to the net cost of the USO. The losses of a segment are calculated as the difference between the costs associated with the activities behind the provision of the universal services segment and their associated revenues. In The Bahamas context, the geographical scope of the segment is that of an island.

with best practice regulation the cost elements that are to be accounted for in the net cost calculation are the investment (i.e., capex) and operating costs of serving non-profitable customers who would not be served by a licensee in the absence of the USO. For the avoidance of doubt, URCA considers that the net cost calculation should *only* include the portion of costs - both capital and operational expenditures that can be directly attributable/allocated to the services that could have been avoided.

Level of analysis

In applying the concept of Net Avoidable Cost, URCA proposes that a reasonable level at which profitability is to be assessed should be at the geographically aggregated unit of the individual islands within the Bahamian archipelago. URCA is cognizant that profitability can be assessed at a more disaggregated level, however, the more granular the level at which profitability analysis is carried out, the more complex the modeling of avoidable costs. The use of the relatively high level aggregation will therefore limit the complexity of the modeling required.

Given that the unit of assessment is an individual island, the USP will be required to ascertain:

- Island profitability: That is, determining on which islands it is unprofitable to provide the USO services; and
- Customer profitability: That is, determining to which groups of end users, USO services are provided at a loss on islands which are profitable overall.

URCA is mindful of the view that a long run (forward looking) incremental cost calculation may be the most accurate approach for the estimation of the USO net cost. However, estimation of that cost may require detailed information about cost volume relationships and complex modelling. Being cognizant of those challenges, and minded that current USPs utilize a historic Fully Allocated Costs (FAC) model to prepare separated accounts, URCA is of the view that USPs should utilize their existing FAC model to estimate the net avoidable costs of the USO until further notice. URCA will evaluate on a regular basis whether this approach remains reasonable.

That factor notwithstanding, in implementing the prescribed methodology, URCA is of the view that fixed common and joint costs should not be included as avoidable costs – to the extent that these are shared between universal and non-universal services. In URCA’s view, USPs would not reduce their fixed common and joint costs if they were not required to fulfil a USO in unprofitable islands and to unprofitable customers in profitable islands. This is premised upon URCA’s understanding that those costs do not change when the volume of activity changes and would therefore not decrease if the USP was to cease offering universal services to those islands and customers, whilst continuing offering non-universal services. In summary, URCA is proposing that the relevant costs that are to be included in the calculation by the USP for its USO are:

- Capital costs (inclusive of both depreciation of capital stock and the cost of mean capital employed³¹) that can be avoided;
- Avoidable operating expenditures; and
- Avoidable overheads.³²

Question No. 21:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 22:

Do respondents agree with URCA’s proposal as 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?*

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their respective position.

4.1.2 Calculating Incremental Revenues

The derivation of NAC requires the calculation of the incremental revenues associated with providing services to the customers who would otherwise not be served. In URCA’s view there are *direct and indirect revenues associated with the provision of a USO* which should be taken into account in the calculation of net costs.

Those direct revenues that are to be included are:

- The one-off-connection (installation) charge incurred in the relevant financial year under review for a USO funding application;
- Monthly access (line rental) or subscription (cable TV) charge;

³¹ Calculated using the Weighted Average Cost of Capital (WACC) as determined by URCA at that point in time.

³² URCA is of the view that efficiently incurred overhead costs should be identified in a clear and transparent manner. Overheads must be relevant to the USO services.

- Reconnection charges (where applicable);
- Premium packages charges;
- Pay per view charges;
- Call revenues inclusive of local, domestic long distance, international, directory enquiries and premium rate services derived from direct or indirect (pre-paid calling cards) dialling;
- Internet services inclusive of dial-up and broadband;
- Value added services (call management services - voice mails, call forwarding, etc.); and
- Coin and payphone card revenues.

The indirect revenues that are to be included in the net cost calculation are the revenues which are not invoiced directly to the end user who is only served as a result of the USO, which would be lost in the absence of the USO provision and which have not been captured in the direct revenues. In general, these cover revenues for services that originate from profitable customers on profitable islands and terminate on unprofitable islands or to unprofitable customers. For example, these would include:

- Net Revenues from incoming domestic calls;
- Net Revenues from inbound international calls to “USO” customers;
- Where relevant receiving party pays revenues;
- Wholesale interconnection revenues which incorporate fixed termination and transit services as a result of calls originating from customers of non-USP networks ;
- Leased lines (retail and wholesale) revenues, where one end of the leased line is located in an unprofitable island and the other end in a profitable island; and
- Advertisement revenues from space leased on public pay apparatus kiosks.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

4.1.3 Calculating Efficiency Adjustment to USO

URCA is of the view that an efficiency adjustment may be appropriate in the determination of net avoidable costs. As previously stated in section 4.1.1 above, USPs shall utilize their existing Fully Allocated Cost model to determine the net avoidable costs of the universal service provision. In URCA’s view, the efficiency adjustment will provide an added safeguard that any

funding sought in relation to the USO would not exceed what is necessary and would not compensate an USP for past decisions which could be considered inefficient. Therefore, URCA is of the view that where a net cost is identified, an additional analysis of the costs must be done in order to assess whether the USP incurred the costs in an efficient manner.

URCA is of the view that the USP, as with other aspects of the net cost calculation, be required to detail in its net cost calculation, the adjustment made for efficiency, inclusive of the justification for the chosen methodological approach – for example, the USP must set out why the USP believes its costs, where adjusted, reflect an efficient cost level. In determining any adjustment factor, URCA believes it would be reasonable for USPs to take into account the results of any efficiency studies previously undertaken by URCA for other purposes such as setting retail or wholesale prices. Where such studies do not exist, the USP will have to demonstrate the reasonableness of its chosen approach. In such circumstances URCA is of the opinion that one way for an USP to assess its efficiency could be for it to compare the ratio between its capital and operating expenditures.

Question No. 24:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

4.1.4 Intangible Benefits to USO

URCA's review of the literature³³ and international experiences³⁴ on universal service suggests it is also appropriate to include an estimate of the value of intangible benefits in the calculation of net USO costs. Indeed URCA is cognizant of the recent ruling by the European Union courts³⁵, in

³³ See the ICT toolkit at <http://www.ictregulationtoolkit.org/en/PracticeNote.aspx?id=3141>

³⁴ Regulation 19 of DIRECTIVE 2002/22/EC of The European Parliament and of The Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).

³⁵ Commission vs. Kingdom of Belgium (C-222/08 *Commission v Belgium*, C-389/08 *Base NV and others v Ministerraad*).

which the court reaffirmed the need to include intangible benefits in the determination of the net cost of the USO.³⁶

Intangible benefits reflect the gains to an USP from its provision of the USO. The intangible benefits derived as a result of being designated an USP are netted off the costs of providing the USO. A review of the international experience reveals that the intangible benefits included in the net USO cost calculation and the approaches to quantifying those benefits vary by countries (see *Tables 1 and 2 below*). While it may be argued that intangible benefits are difficult to quantify and a degree of judgment is inevitably involved, URCA proposes to include intangible benefits in any NAC calculation. The intangibles that URCA considers potentially relevant for USO in The Bahamas are:

- **Enhanced Brand Recognition/Corporate Reputation**: the enhancement of a licensee's brand, image and goodwill as a result of its designation as an USP. URCA notes the various approaches used by regulatory agencies in estimating brand recognition benefits. These include the use of primary research/survey data techniques (Italy)³⁷, regression techniques (France)³⁸, or calculating the value as a percentage (United Kingdom)³⁹ or ratio of advertising revenues (Spain)⁴⁰. Based upon data availability and computational ease, URCA is of the preliminary view that the approach taken by OFCOM in the UK may be most applicable to The Bahamas. To that end, URCA proposes that brand recognition should be estimated as a percentage of the USP's advertising revenues and while OFCOM valued the benefit at 20% of BT's retail advertising and sales expenditures, URCA, being more conservative, given the level of Gross Domestic

³⁶ URCA is also aware of the case of the Commission v. French Republic, where France was found guilty for, among others things, not including intangible benefits in its calculation of USO (C-146/00 Commission of the European Communities v. French Republic).

³⁷ Autorità per le Garanzie nelle Comunicazioni (AGCOM) utilized primary research/survey data to estimate the percentage of profitable area customers that stayed with the USP. AGCOM estimates of brand recognition in 2003 was €15.3 million. See http://www2.agcom.it/provv/d_22_06_CIR/Relazione%20finale%20EE%20USO%202003.pdf

³⁸ Autorité de Régulation des Communications Électroniques et des Postes (ARCEP) utilized an econometric estimation of the price a customer is willing to pay before switching to another provider. That price reflected the branding associated with universal service, customer inertia and branding independent of USOs. ARCEP estimated brand recognition in 2008 at €18.3 million. See ARCEP Decision n° 2010-0448.

³⁹ Office of Communications (OFCOM) expressed brand loyalty in terms of advertising revenues and valued the benefits as 20% of the USP's retail marketing and sales expenditures. OFCOM estimated brand recognition in 2003/04 at €50 - €52 million. See Ofcom "Review of the Universal Service Obligation" Statement. 14 March 2006 <http://stakeholders.ofcom.org.uk/binaries/consultations/uso/statement/statement.pdf>

⁴⁰ Comisión del Mercado de las Telecomunicaciones (CMT) estimates brand recognition as a ratio of universal services revenues to group revenues. To estimate a benefit from this value, CMT applies the USP's WACC to the part of the brand value allocated to the universal service. CMT estimated brand recognition in 2008 at €5.8M. See AEM 2010/1738, October 2010.

Product per capita of The Bahamas, is of the view that the value to be applied in The Bahamas should be 10% of the USP's retail advertising and sales expenditures. This value is reflective to some degree of the corporate goodwill and brand appeal of the USPs in the Bahamian electronic communications market.

- **Ubiquity**: the advantages of having a ubiquitous presence as a result of the licensee being designated the USP and thereby having a greater profile with potential customers/households or existing customers/households that may migrate across the Bahamian archipelago from **unprofitable areas/islands to profitable areas/islands**. URCA's research suggests that regulatory agencies in the UK, Ireland, Italy, Spain and France, utilize migration flows from **uneconomic (unprofitable) to economic (profitable) areas** as a way to quantify the ubiquity benefit accruing to the USP. URCA proposes to adopt the same approach; that is, USPs should estimate the ubiquity benefits on the basis of customers' or households' migration from economic to uneconomic island/areas. URCA therefore is proposing that the per-line net contribution to profit of customers or households who migrate be computed and used by the USP, as the estimate of ubiquity benefit.
- **Life Cycle Effect**: this is the benefit arising from the proportion of lines which are currently unprofitable, whether on islands or by customers, which are likely to be profitable in the future. While this benefit depends upon the likelihood of the USP serving these islands/customers when they become profitable, URCA is of the view that this may continue to hold in the near future given the current state of competition. In estimating the life cycle benefit, URCA is proposing that the appropriate unit of measurement should be that of the household. The life cycle benefit would therefore be determined by the net value of the number of households that switch from being unprofitable to profitable as income grows and the difference between the cost of customer acquisition and customer retention as barriers to switching are removed (e.g., number portability, indirect access).
- **Marketing**: this relates to the potential commercial benefits derived from being designated the USP. These may arise, inter alia, from the commercialization of customer usage data and advertisements on public apparatus kiosks and/or Wi-Fi hot spots in unprofitable islands. However, URCA is aware that the advertising revenues from public apparatus kiosks are already captured as an indirect revenue stream, thus just leaving the commercialisation of customer usage data as a potential benefit. The utilization of customer usage data may potentially arise as the Bahamian communications market matures. At that time, URCA would consider the benefits derived from the commercialization of customer usage data. While URCA's preliminary view is to equate the benefits to commercialization of the usage data to the net revenue derived from

that commercialisation, URCA nonetheless has an open mind to this issue and will take into account the views of all respondents.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Table 1 Types of Market benefits (Intangible Benefits)

Country	Market Benefits
Belgium	Notoriety of the brand, ubiquity, life cycle of customers, marketing
Bulgaria	Brand image, provision of additional services on the commercial bases, line life cycle effects, access to subscribers' data, marketing.
Czech Republic	Sum of earnings from service provision, earning linked to service provision and indirect benefits (savings of costs)
Estonia	Provision of additional services (e.g. ADSL) on the same line.
Spain	Ubiquity, More to be added on the basis of the study. Intangible benefits to be calculated on the basis of questionnaires for this purpose.
France	Benefits: Sales, ads, traffic induced from service. Intangible benefits technical and commercial benefits from the extent of network, improved economic capacity, subscriber data, brand image.
Italy	Market benefits such as brand loyalty, advertising on PPP, brand on billing, profits within potential uneconomic areas and PPP.
Cyprus	Enhanced brand recognition and network coverage, life cycle value of customers, marketing benefits.
Latvia	NRA takes decision on market benefits based on information from provider.

Lithuania	Advertising, database, ubiquity, reputation.
Luxemburg	Commercial advantage bad intangible benefits.
Hungary	Advantages from providing the US, lifecycle benefits, corporate reputation, access to full range of market information, advertisement, market value of bill letters.
Netherlands	All benefits that can be expressed in monetary value and are related to the provision of universal service, including intangible benefits.
Poland	Greater awareness of consumers about provider, reputation, ubiquity, life cycle effects, access to subscribers' data, marketing possibilities.
Portugal	Inclusion of intangible benefits based on ECJ's ruling and Commission's Communications.
Romania	Forecasted revenues from the provision of services within the scope of universal service (incremental revenues and associated benefits, incl. direct and indirect revenues).
Slovenia	All material benefits and intangible benefits (greater visibility of trade mark, presence on national market, marketing advantages).
Slovakia	Goodwill, reinforcement, service usage information access – market knowledge, advertising, ubiquity.
Finland	Intangible and immaterial assets: status of US provider giving advantages in other service markets.
United Kingdom	Ubiquity, life cycle, payphone advertising

Source: Replicated from Annex 1 of the Communication Committee "Arrangements for provision of universal service financing pursuant to the new regulatory framework" available at http://circa.europa.eu/Public/irc/infso/cocom1/library?l=/public_documents_2007/cocom07-08_annex1/EN_1.0_&a=d

Table 2: Methodologies Used to Assess the Value of the Market Benefit in Selected EU Countries

Benefits	EU Countries	Methodology to Calculate
Life Cycle	France	<p>Some subscribers, who are not profitable in year y, will be profitable on a longer period [y to $y+4$]. So, operators may have a commercial interest to connect them in year y.</p> <p>Costs and revenues are estimated on a 5-year period because of macroeconomic parameters (annual growth rates of costs, revenues and traffics).</p> <p>The benefit is equal to the year y deficit of subscribers (/areas /public payphones) which are unprofitable year y and profitable on the 5-year period.</p> <p>(Note: No individual data is used, so this is not, strictly speaking, a "life cycle effect".)</p>
	Spain	<p>Step 1: Eliminate the lines of social guarantee</p> <ul style="list-style-type: none"> - The social guarantee lines number susceptible of being profitable is insignificant <p>Step 2: Eliminate the lines that pass to be profitable by a change of location</p> <ul style="list-style-type: none"> - Considered in the intangible benefit by ubiquity <p>Step 3: Estimation of the intangible benefit</p> <ul style="list-style-type: none"> - Product of the lines that become unprofitable for the differential of margin by line between one year and another

		<p>If differential <0, negative profit value. There is no intangible benefit. If differential >0, positive profit value, for a change in the consumers trends.</p>
	United Kingdom	<p>In order to calculate life cycle effects for uneconomic customers, it would be necessary to estimate:</p> <ul style="list-style-type: none"> • the number of "lossmaking" customers and their net costs • the proportion of those likely to become profitable subsequently • the net present value of such profits (this should take account of the implications of changes in the structure of telecoms prices) • the proportion of such subscribers whom the USP would keep. <p>Source: http://www.ofcom.org.uk/static/archive/oftel/publications/1995_98/consumer/univ_1.htm#chap9</p>
Ubiquity	Spain	<p>Step 1: Identification of the not profitable lines that become profitable - Migratory flows and composition of the household in Spain published by the INE (National Statistics Institute)</p> <p>Step 2: Identification of the households that decide to contract Telefónica services in the profitable zone for gratitude and fidelity reasons - Not profitable lines that become profitable multiplied by the market share of Telefónica in new subscriptions</p> <p>Step 3: Estimation of the intangible benefit - Product lines that become unprofitable for the margin average by line and year that Telefónica is obtaining.</p>
	United Kingdom	<p>Estimating the benefits of ubiquity, would involve establishing the difference between the proportion of newcomers to an area which subscribe to the USP and the (possibly long run) proportion of the USP's subscribers among long-term residents. The differential is then evaluated on a net present value basis, and counted as a benefit. The information required for this approach is:</p> <ul style="list-style-type: none"> • a measure of the proportion of subscribers with access to an alternative service • the number of people moving to such areas • the percentage of newcomers connecting to the USP • the (current or long-term) percentage of existing subscribers using the alternative service provider • the average net present value to the USP of a customer. <p>Source: http://www.ofcom.org.uk/static/archive/oftel/publications/1995_98/consumer/univ_1.htm#chap9</p>
Brand Enhancement and Corporate Reputation Benefit	France	<p>People may be grateful towards France Telecom (FT) for offering universal service. This gratefulness is measured by an "over-price" that subscribers are ready to pay. For the assessment, a survey is necessary. Subscribers are asked about:</p> <ul style="list-style-type: none"> • their knowledge of FT's universal service obligations; • FT's corporate reputation; • the "over-price" they are ready to pay to stay FT's customers. <p>Statistical methods allow to calculate an "over-profit" and to split this "over-profit" between:</p> <ul style="list-style-type: none"> • USO related corporate reputation; • Non USO related corporate reputation; and • inertia of customers.
	Spain	<p>Step 1: Appraisal of the image of mark of the Telefónica Group - Annual Reports of Corporate Responsibility, mark registrations evolution and controls</p> <p>Step 2: Identify the incomes of the Group and the incomes of Telefónica by the services included in the US - Calculate the percentage of gross earnings of Telefónica allocated to the US</p>

		<p>on the gross earnings of the Group</p> <p>- Apply this percentage and the WACC on the value of the mark</p> <p>Step 3: Attribution to the lines of Telefónica which are generators of net cost .</p>
Payphone Advertising	United Kingdom	<p>The benefits of payphone advertising consist of two potential elements.</p> <ul style="list-style-type: none"> • Firstly, where payphones bear a corporate branding or logo, they may be considered to represent a form of advertising to the benefit of the USP. Where this value is not considered to be captured in any broader “brand benefit” estimate, then it may be necessary to estimate the value of this brand exposure. • Secondly, some payphones now carry actual billboard advertisements on the sides or front of the kiosk. The value of the income stream that this provides should be included in any assessment of the profitability of a payphone that is provided as a result of the USO.
	Czech Republic	<p>The benefits of payphone advertising consist of two potential elements.</p> <ul style="list-style-type: none"> • Firstly, where payphones bear a corporate branding or logo, they may be considered to represent a form of advertising to the benefit of the USP. • Secondly, some payphones now carry actual billboard advertisements on the sides or front of the kiosk (takings revenues from rent the advertisements place or using the place for own benefit from unpaid advertisement).
Customer Database	France	<p>The methodology for evaluating these benefits is based on the following assessments:</p> <ul style="list-style-type: none"> • Assess the benefit from sending non-valuable subscribers’ data to direct marketing companies (for DS/DES companies, the French regulations specify that operators should make no profit) • Assess the benefit from selling other products even if parameters are roughly estimated

Source: BEREC Report on Universal Service – reflections for the future, June 2010

4.1.5 Calculating Net Avoidable USO Costs of differently-abled users

URCA is of the view that the net avoidable cost of the provision of specific services to differently-abled users, resulting from the USO designation that are in addition to the cost associated with the standard universal services, should, be determined by using the same calculation discussed in Section 4.1 above. That cost should be gross avoidable cost adjusted for total revenues forgone and adjusted for efficiencies and intangible benefits. Specific to differently-abled users, avoidable costs would include the avoidable cost associated with the provision of special services and specialised equipment.

5. CRITERIA TO DETERMINE ENTITLEMENT TO FUNDING

In evaluating the merits of an USP's request for funding URCA will evaluate whether the USO places an (un)fair financial burden on the USP.

5.1. Definition of an unfair financial burden

In its judgment, in the Case of the European Commission vs. The Kingdom of Belgium (C-222/08) the European Union Court of Justice defines unfair burden as “(..) *a burden which, for each undertaking concerned, is excessive in view of the undertaking's ability to bear it, account being taken of all the undertaking's own characteristics, in particular the quality of its equipment, its economic and financial situation and its market share.*” URCA proposes to have regard to this definition in determining what constitutes an unfair financial burden upon an USP in The Bahamas.

The Court further stated that “*it falls to the national regulatory authority to lay down general and objective criteria which make it possible to determine the thresholds beyond which – taking account of the characteristics mentioned in the preceding paragraph – a burden may be regarded as unfair (...)*”.⁴¹

Having regard to the recent EU Court of Justice decision, URCA, recognizes the importance of detailing its approach to ascertain whether an unfair financial burden exists. In so doing, URCA has reviewed the international experience on the implementation of an appropriate methodology for ascertaining the existence of an unfair burden. While the evidence is not conclusive, URCA recognizes that a number of jurisdictions have so far relied on a given market share threshold to establish whether an USP may suffer an unfair burden (Table 3) in the event that the net cost of the USO is positive.⁴² URCA is equally minded and is of the view that a given threshold be used to establish whether an USP may suffer an unfair financial burden in The Bahamas. URCA therefore proposes to presume that no unfair burden exists where the USP market share is eighty per cent (80%) or more of the relevant universal service market (Pay TV,

⁴¹ case C-222/08, available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0222:EN:HTML>, on 01.01.2011

⁴² See also Annex 1 of the Communication Committee “Arrangements for provision of universal service financing pursuant to the new regulatory framework” available at http://circa.europa.eu/Public/irc/info/cocom1/library?l=/public_documents_2007/cocom07-08_annex1/_EN_1.0_&a=d

Basic Telephony, etc.). For market share less than the specified threshold (80%), URCA would ascertain whether an unfair burden exists.⁴³

Question No. 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%?

Respondents should detail their responses in full and should include, where they disagree, alternative approaches and provide evidence and experiences to support their position.

Table 3 Definition of the unfair burden in several EU countries

Country	Definition of Unfair Burden
Austria	Considers that there is no unfair burden where the USP market share exceeds 80%
Germany	According to legal framework, regulatory intervention only takes place where the market is not able to provide the service. So far, the market has provided the US on its own, thus an USP has not been yet designated. Consequently, no regulatory measure has been yet applied, including the definition of unfair burden.
Bulgaria	Considers that there should not be any compensation where the USP market share, measured on the basis of revenues, is equal to or exceeds 80% and where less than 17% of the total USP subscribers use price packages for economic reasons.
Croatia	Considers that there should not be any compensation where the USP market share, measured on the basis of revenue, exceeds 80%.
Spain	It was considered that the USP did not incur a significant competitive disadvantage from 2000 to 2002 on account of the provision of US, and thus no compensation was paid. As far as 2003 and the subsequent years are concerned, the regulator considered that an unfair burden occurred due to the telecommunications market evolution and interdependence between the fixed telephone service and mobile service
Finland	The regulator has never calculated CLSU nor defined the notion of unfair burden. According to the legislation, the definition of unfair burden must consider the ratio between the size and volume of the business.
France	The regulator has always considered CLSU to constitute an unfair burden. It assesses whether CLSU are considered an unfair burden on the basis of a set of elements, namely: 1) weight of CLSU vs. financial risks entered in the accounts and annual report of the France Telecom

⁴³ If an USP believes it does face an unfair financial burden with a market share greater than 80%, it will be expected to demonstrate to URCA the presence of this burden.

	Group; and ii) the comparison of the value of CLSU and the implementation and management cost of the financing mechanism.
Ireland	Comreg has recently published a public consultation indicating that it intends to assess whether US burden are unfair, on the basis of static and dynamic criteria, such as, among others, price variations, profitability and financial indicators. It also refers that the possible existence of "cherry picking" demonstrates a level of competition that prevents the USP from internalizing cost with the US provision.
Italy	The regulator has always acknowledged the existence of unfair burden, having declared in 2002 that it has used data provided by operators to assess the level of competition in the telecommunications market. The result of the analysis showed that the level of competition had improved, in opposition to the preceding years. More specifically, the market share of telecom Italia's telephony traffic volume has decreased from 82% in 2000 to 70% in 2001. The same tendency was identified in the market revenues of Telecom Italia's telephony traffic which, for the same period, decreased from 81% to 77%. The general telecommunications market, in terms of revenues, fell 1% against the increase in 7% of traffic volume.
Lithuania	Considers that there is an unfair burden where the USP market share in former markets 1 and 2 of EC Recommendation, measured on the basis of revenues, is lower than 80%.
United Kingdom	Until 2006, the regulator considered that there was no unfair burden, referring that "BTs overall level of profitability, after taking into account the costs of US, exceeded what BT needed to cover its full cost and make reasonable return". The Regulator is analysing now the matter for the subsequent years.
Czech Republic	The total value of CLSU is considered to be unfair burden. The assessment of unfair burden applies the following criteria: i) a comparison between USP's net cost and pre-tax result and ii) a comparison between USP's net cost and total sum of revenues arising from the USP performance in communication activities.
Romania	The total value of CLSU is considered to be an unfair burden.
Sweden	In June 2008, the regulator decided not to impose any US obligation (even though there are zones of the country where the service is not provided).

Source: Replicated from Autoridade Nacional de Comunicações (ANACOM). 2011. Available at http://www.anacom.pt/streaming/decision_unfair_burden09june2011.pdf?contentId=1092032&field=ATTACHED_FILE

5.2 Methodology for Evaluating Unfair financial Burden

In URCA's view there are three cumulative conditions that are necessary for the USO to impose an unfair financial burden on an USP:

- The existence of a verifiable direct net cost for the USP (i.e., a net cost of the USO without the inclusion of intangible benefits);

- The existence of a positive net cost for the USPs (that is, a net cost of the USO is positive even after the inclusion of intangible benefits); and
- The positive net cost must be (i) material compared to administrative cost associated with the USF and (ii) must generate a significant competitive disadvantage to the USP.

In the event where an USP applying for funding for the provision of its USO has a market share less than 80%, URCA proposes to undertake a full assessment of the possible existence of an (unfair) financial burden associated with the provision of the USO. As set out above, if an USP has a share larger than 80%, it will be a requirement upon the USP to demonstrate if it faces an unfair financial burden.

The first two conditions will be ascertained with the methodological steps described in the previous chapter. The third condition is concerned with coming to a view as to whether the net cost is an unfair financial burden and is made of two cumulative elements reflecting both static and dynamic considerations. URCA proposes in turn to test this third condition with three assessments.

- **Administrative Cost Assessment:** URCA would assess whether the cost to establish the USF would be disproportionate to the net transfers to the USP;
- **Assessment of the USP's Financial Position:** URCA would assess whether the net cost materially undermines the USP's profitability and/or ability to earn a fair rate of return on capital employed; and
- **Competitive Distortions Assessment:** URCA would assess whether the net USO cost materially impacts an USP's ability to compete on equal terms with its competitors going forward. These three conditions are discussed further in the next paragraphs.

5.2.1 Administrative Cost Assessment

After considering the principles detailed in s.5 of the Comms Act, specifically transparency, non-discrimination, minimization of market distortion and proportionality, URCA is of the view that the net USO cost, if any, must be considered in the light of the comparison between the cost of establishing the relevant USFs and the net transfer to the USP (or equivalently the relative size of the USP's own contribution to the fund). Where the regulatory costs of administering a USF are disproportionate to the net transfer to the USP, URCA is of the preliminary view that the USP should bear the *net USO cost*.

Question No. 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?

Respondents should detail their responses in full, and should include, where possible, evidence and experiences to support their position.

5.2.2 Assessment of the USP's Financial Position

URCA is also of the view that the net cost be assessed as to whether it represents an unfair burden on the USP's current profitability. The objective of this assessment would be for URCA to be reasonably certain that the USO is not undermining the USP's profitability in the prevailing current market circumstances and that it is able to earn its Weighted Average Cost of Capital (WACC) in the short term.

URCA is of the view that URCA should 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 non-USO services to support the provision of the USO services. To that end, URCA would conduct appropriate profitability analyses and the USPs would be expected to provide the relevant information to URCA.

Question No. 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 non-USO services to support the provision of the USO services?

Respondents should detail their responses in full, and should include, where possible, evidence and experiences to support their position.

5.2.3 Competitive Distortion Assessment

URCA acknowledges that an assessment of the USP's current ability to pay the net cost of the USO, as described above, is static and provides limited insights on the USP's ability to continue to provide the USO looking forward. Therefore, URCA proposes to add a dynamic analysis. Broadly speaking, this assessment would be concerned with how competition has evolved and is

evolving and how alternative operators' actions constrain the USP's actions and ability to self-finance its USO.

Where URCA determines that a positive net USO cost is evident, it may assess whether that cost imposes a significant competitive disadvantage on the USP. In its assessment, URCA will have regard to the following criteria:

- changes in prices over time;
- changes in market share and/or changes in related markets; and
- market entry barriers.

URCA is of the preliminary view that these criteria would provide an informed view of the dynamic impact that a USO may have on an USP and thereby flag any potential risk of market distortions as a result of the USO and thus the risks to the financial sustainability of the USO provision.

Question No. 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 also consider?

Respondents should detail their responses in full, and should include, where possible, evidence and experiences to support their position.

6. UNIVERSAL SERVICE FUND

Under s.44 (1) URCA may establish by determination or regulation a universal service fund or universal service funds, into which monies shall be contributed by relevant contributors. Further when establishing one or several funds, Section 44(2) requires URCA to “*specify whether the funds shall be applied to all universal service obligations or whether only certain universal service obligations shall be included or excluded from the funds under which the designated universal service providers may apply for funding.*” In URCA’s current view, one might envisage either a separate fund for each USP for compensating all its obligations if these represent a net financial burden (i.e two funds, one each for CBL and BTC respectively) or separate funds for different types of obligations (i.e. telephony, internet and TV for examples). URCA is minded to think that the former option may be more appropriate in the Bahamas, but seeks respondents’ views on this matter.

In accordance with s.44(3) of the Comms Act, the USFs will be administered by URCA. In managing those Funds, URCA will have regard to:

- contributors to the USFs;
- structure and operation of the USFs;
- USFs Management Rules;
- administrative and management cycle of the USFs;
- payment to the USFs; and
- administrative costs of the USFs.

Question No. 31:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

6.1 Contributors to the USFs

In keeping with s.44(1) of the Comms Act, and relevant to this consultation, monies appropriated by URCA⁴⁴ specific to the purpose of funding universal services are to be paid into the Funds.

⁴⁴ See footnote 6

Contributors to the USF are those licensees or content providers upon whom URCA may, in accordance with s.44(4) of the Comms Act, impose a charge specific for the purpose of universal services. URCA is of the view that all licensees of electronic communications services in The Bahamas should contribute to the USF to recover the net avoidable costs. All licensee contributions, in URCA's view, should be equated to the same percentage of the Total Relevant Revenues (TRR) of each licensee. The TRR, which serves as the basis for the appropriation of contributions to the USF, will comprise of the revenues arising from the provision of licensed electronic communications services in The Bahamas. However the TRR will 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.

For the purposes of the USF, a licensee will take the meaning as defined under s.2 of the Comms Act, while a content provider will assume the meaning of a provider of 'audiovisual media services' as defined in s.2 of the Comms Act. Therefore, a licensee that provides an audiovisual media service is required to include that service in its TRR for the purposes of its USF contribution. Alternatively, a content provider that is not a licensee under the Comms Act, such as a media house or advertising firm, will not be required to contribute to the USF. That situation notwithstanding, URCA is of the view that contributor licensees may be exempt, in accordance with the s.44(5) of the Comms Act, from paying the levy charge if those licensees TRR are less than B\$50,000.

Question No. 32:

Do respondents agree with URCA's proposal to appropriate a percentage contribution that equates to a licensee contribution to the Total industry Total Relevant 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?*

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

6.2 Structure and Operation of the USFs

All payments received for the USFs will be deposited into accounts specifically opened for the Funds and all payments due to be made out of the Funds will be drawn on the relevant accounts and will adhere to a USO 'Cash Management Policy' to be developed and published by URCA in the USO Implementation Plan.. The USFs will be distinct and apart from URCA's Fund established under s.35 of the URCA Act for URCA's operating and capital expenditures. URCA will keep separated financial accounts for each USF and those accounts will be audited annually by external auditors appointed by URCA and the auditors' report on each USF will be published on URCA's website.

All monies held in the accounts and any entitlement to interest will be held by URCA as manager of the Funds. Further, any surplus or debit balances in the USFs in respect of any year after monies have been collected and disbursed will be carried forward to the following year.

Question No. 34:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

6.3 Administration and Management Cycle of the USFs

The administrative and management cycle of the USF will follow the calendar year. In the event that an USP wishes to make a request for USO funding, any such request should 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. Failure by the USP to submit a claim for the costs of the USO for a particular year and/or failure to provide sufficient information for URCA to be able to approve the USO costs submitted as part of the claim will result in the claim being rejected for that particular year. In these instances, the

particular USP would not be able to claim or receive any compensation for the USO costs incurred that year.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 36:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

6.4 Payment to the USFs

Contributors will be required to pay contributions to the USFs account on terms and in the time period specified by URCA. Those proposed terms are:

- contributor licensees would be required to submit to URCA financial statements of the TRR within four (4) months after the end of their financial year;
- URCA would calculate the contribution of each contributor licensee to the USFs;
- URCA would issue on or before 30 calendar days after the eleventh month of receiving those financial statements, invoices to contributor licensees specifying the quantum of their contribution to the relevant Funds; and
- contributor licensees would be required to make the necessary payment before the expiration of 30 calendar days to the relevant USF account.

Failure by a contributor licensee to pay the required contribution by the due date will incur an interest rate payment at an annual rate of 3% above the prime lending rate, as notified by the Central Bank of The Bahamas, on the outstanding monies, from the date on which the payment was initially due until the full contribution is paid to the USF account.

Question No. 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 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?*

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 38:

Do respondents agree with URCA’s proposal that the failure by a 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 contributions is paid to the USF account?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

6.5 Administrative Costs of the USFs

In support of the management of the USF, URCA would be required to provide such other personnel, facilities and professional advice as it considers necessary to secure the efficient operations of the Fund. URCA will annually calculate, the administrative costs directly incurred in managing the Fund and will add those costs to the USO costs subject to compensation.

URCA is of the view that in the interest of transparency and accountability, administrative costs will be audited by external auditors appointed by URCA and the audited report on those costs will be included in the auditors’ report issued to contributors annually.

Question No. 39:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

6.6 Universal Services Market Based Funding mechanisms

When specifying those USOs that shall be eligible for funding from the USF (or excluded), URCA shall have regard to s.43(1)(b) of the Comms Act which allows URCA to determine other alternatives means of funding, inclusive of “market-based” funding mechanisms. URCA notes however, that the term “market-based” has not been defined in the Comms Act. Having considered the definitions and/or concept of “market-based” in respect of USO, URCA proposes the following definition:

“Market-Based funding means mechanisms whereby both the provision of the USO and the financing of the net cost of the USO are met by rules setting how all service providers and users can operate in the electronic communications market.

Question No. 40:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Market-based funding mechanisms include for example a pay or play mechanism whereby an operator allowed to supply its services in a given market must first choose either to participate in the provision of the USO or to pay other operators to ensure the provision of the USO. Another example is that of auctioning the provision of the USO (and its funding) to specific regions or islands. In assessing its options, URCA, given the unique characteristics of The Bahamas, may consider a pure market-based option a mix of funding option (market and Fund) or pure Fund based funding.

Question No. 41:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

At the level of Islands in The Bahamas, URCA is aware that the Bahamian archipelago is comprised of “700 islands and cays”, some of which are privately owned. In the instance of those islands and cays which are privately owned, URCA is of the preliminary view that the USP is entitled to recover the full cost of the USP’s USO from those owners and/or developers. In this instance the user is expected to participate to the funding of the USO. In respect of non-

privately owned islands that are unprofitable, URCA would consider other market-based options such as the play or pay options.

7. TREATMENT OF CONFIDENTIAL INFORMATION

URCA is cognizant that the USO places a premium on accuracy of data/records, transparency and submission of information that may be considered confidential by USPs. It is therefore likely that USPs consider certain information submitted to URCA in this regard as commercially sensitive. However, URCA is equally mindful that other licensees and/or stakeholders who are required to or may contribute to the USFs would have a legitimate interest to peruse the computation of net USO costs and be afforded the opportunity to comment on the same.

URCA is mindful of its position on the publication of separated accounts for SMP licensees and is of the preliminary view to adopt a similar approach to the disclosure of information that is specific to universal service. URCA is therefore of the view that any harm, loss or damage that might be occasioned by the disclosure of an USPs commercial information must be balanced against the need to address any information asymmetry between those USPs and all other contributor licensees to the Funds. In seeking that balance, URCA will have regard to the extent to which publication of the relevant information may damage the USPs legitimate commercial interests.

Unlike its previous Consultation on Publication of Separated Accounts, URCA is of the view that there may be one main reason why the disclosure of information might harm the commercial interests of the USP; that is if it results in “competitive harm”.

URCA notes that the evidence available internationally is inconclusive as to whether or not the disclosure of ‘confidential information’ may harm the legitimate commercial interest of the USP. Some regulators either seek to establish a ‘confidentiality ring’ or make the information publically available. URCA is of the preliminary view that USPs be required to demonstrate that the public disclosure of an USPs net costs will cause commercial harm. The rationale for URCA’s position is rooted in the USPs being better placed to produce evidence to support their respective positions. In demonstrating harm to its commercial interest, an USP must show a direct causal link between the public disclosure of its net USO cost and the competitive harm.

Question No. 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?

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Question No. 43:

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

Respondents should detail their responses in full and should include, where possible, evidence and experiences to support their position.

Annex 1: LIST OF CONSULTATION QUESTIONS

URCA now invites comments from interested parties on this proposed approach and the following proposals:

- Q.1 Do respondents agree with URCA's proposal to include "access" in the definition Basic telephony services for universal service purposes?*
- Q.2 Do respondents agree with URCA's proposed working definition of Fixed Voice Telephony for universal service purposes?*
- Q.3 Do respondents agree with URCA's proposal that call management services and features should be excluded from the Universal Service Obligation?*
- Q.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 regards to the factors listed?*
- Q.5 Do respondents agree with URCA's proposal not to specify a bandwidth throughput for CBL's Internet Services USO?*
- Q.6 Do respondents agree with URCA's proposal to retain BTC's Basic Dial-Up Internet Services USO (i.e., narrowband)?*
- Q.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 a pay apparatus, or from one pay apparatus to another within the same populated area?*
- Q.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 educational institutions, etc.?)*
- Q.9 Do respondents agree with URCA's proposal that the additional channels comprising the Basic Television Services package should be sufficiently informative on matters that are relevant to the Bahamian society and include relevant programming on news, sports, variety and family entertainment?*
- Q.10 Do respondents agree with URCA's proposal that total access costs not be borne solely by the Basic Television Services USO multichannel offering but rather be shared by the other USP's communications services that share the same access connection?*

Q.11 Do respondents agree with URCA's proposal that designated Specified Institutions should be defined as follows:

- **Public and church operated schools** would mean those public and church operated schools registered with the Ministry of Education;
- **Public libraries** would mean those public libraries registered with the Ministry of Education;
- **Public hospitals and public medical clinics** would mean those public hospitals and clinics registered and/or operated by the Ministry of Health and/or the Public Hospital Authority;
- **Senior citizens homes** would mean those senior citizens homes registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development; and
- **Orphanages will** mean *children's homes* registered with the Residential Care Establishment Licensing Authority of the Ministry of Labour and Social Development.

Q.12 Do respondents agree with URCA's proposal that URCA establish a Specified Institutions Register and publish that Register semi-annually on its Website?

Q.13 Do respondents agree with URCA's proposed working definition of Community Centers?

Q.14 Do respondents agree with URCA's proposal that a Community Center 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?

- *The exact location, amenities and its hours of operation;*
- *List of the types of community and developmental programs, activities or services currently offered at the Center;*
- *The benefits (actual and intended, current and future) provided by the Center to the community where the Center is located;*
- *Evidence to demonstrate the availability (if any) of Information and Communications Technology (ICT) Services, and a schedule of any computer literacy and other ICT courses offered at the Center; and*
- *Facilities (if any) to accommodate the differently-abled members of society (e.g., ramps etc.).*

Q.15 Do respondents agree with URCA's proposal that Community Centers demonstrate each year they meet they adhere to the stipulated requirements to both URCA and the USP from which they are seeking universal services?

- Q.16 *Do respondents agree with URCA’s proposal that Universal Services be accessible to the differently-abled or those members of the society with functional impairment?*
- Q.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?*
- Q.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?*
- Q.19 *Do respondents agree with URCA’s proposal to adopt 220 yards as the maximum distance between dwellings for the purposes of populated areas?*
- Q.20 *Do respondents agree with URCA’s proposal that “inhabited dwelling” should mean dwelling that are:*
- *Non-transient in nature;;*
 - *residential (non-commercial)*
 - *inhabited (not vacant, partially constructed or abandoned).?*
- Q.21 *Do respondents agree with URCA’s proposal that the appropriate unit of assessment of net avoidable cost be that of the individual islands?*
- Q.22 *Do respondents agree with URCA’s proposal as 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?*
- Q.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?*
- Q.24 *Do respondents agree with URCA’s proposal to make an efficiency adjustment based on any annual productivity gains the USPs achieve?*
- Q.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?*
- Q.26 *What method or combination of methods for calculating each of the specific benefits detailed in this Public Consultation document (at section 5.1.4) do respondents consider to be the most appropriate?*

- Q.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%?*
- Q.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?*
- Q.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 non-USO services to support the provision of the USO services?*
- Q.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 also consider?*
- Q.31 *Do respondents agree with URCA's proposal to establish separate USFs for each designated USP?*
- Q32 *Do respondents agree with URCA's proposal to appropriate a percentage contribution that equates to a licensee contribution to the Total industry Total Relevant 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?*
- Q33 *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?*
- Q34. *Do respondents agree with URCA's proposal to open separate Accounts for universal service and to have those Accounts audited and published annually?*
- Q35 *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?*

- Q36 *Do respondents agree with URCA’s proposal that the failure by an USP to provide sufficient robust information for URCA to be able to approve the USO costs submitted as part of its claim should result in the whole process being cancelled for that particular year?*
- Q37 *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 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?*
- Q38 *Do respondents agree with URCA’s proposal that the failure by a 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 contributions is paid to the USF account?*
- Q39 *Do respondents agree with URCA’s proposal that the administrative and management costs be recouped through the contribution to the USF?*
- Q40 *Do respondents agree with URCA’s proposed working definition of Market-Based?*
- Q41 *Do respondents agree that URCA proposal to consider a various funding options inclusive of pure market-based, a mix of funding (market and USF) or pure Fund based funding?*
- Q42 *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?*
- Q43 *Do respondents consider that URCA should establish a “confidentiality ring” and if so, who should URCA consider as appropriate to be part of that “ring”?*

For completeness, interested parties need not necessarily confine comments to these specific proposals.