



# THE COMMUNICATIONS BILL, 2009

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# THE COMMUNICATIONS BILL, 2009

A BILL FOR AN ACT TO PROVIDE COMMUNICATION SERVICES.

Enacted by the Parliament of The Bahamas.

## PART I – PRELIMINARY

### 1. Short title and commencement.

- (1) This Act may be cited as the Communications Act, 2009.
- (2) This Act shall come into force on the date specified by a notice published in the Gazette, which shall be the earlier of –
  - (a) the date when the Government no longer holds the majority of shares in Bahamas Telecommunications Company; or as soon as practicable thereafter; or
  - (b) such other earlier date as the Minister may appoint.

### 2. Interpretation.

In this Act, all terms shall have the meaning attributed to them by the Interpretation and General Clauses Act (*Ch. 2*) unless otherwise expressly defined –

“**affiliate**” or “**affiliated company**” includes, in relation to another company, a company that directly or indirectly controls, is controlled by, or is under common control with, such other company; and hence is considered to be a member of the same group of companies;

“**audiovisual media service**” means a service for the provision of material with a view to its being comprised in signals conveyed by



means of a network which is under the editorial responsibility of the service provider of that service;

**“Bahamas Telecommunications Company”** shall mean Bahamas Telecommunications Company Limited, a private company limited by shares incorporated in The Commonwealth of The Bahamas with registration number 48750;

**“broadcasting”** means a service which consists in the provision of—

- (a) television programmes;
- (b) radio programmes; or
- (c) teletext services,

so as to be available for reception by members of the public;

**“carriage service”** means any service consisting in whole or in part of the conveyance of signals by means of a network, except in so far as it is a content service, including the provision of ancillary services to the conveyance of signals and conditional access or other related services to enable a customer to access a content service;

**“consumer”** means any person who uses or requests a service whether for business or residential purposes;

**“content service”** means a service either for the provision of material with a view to its being comprised in signals conveyed by means of a network or that is an audiovisual media service;

**“Corporation”** means the Broadcasting Corporation of The Bahamas originally established by section 3 of the Broadcasting Act (*Ch. 305*);

**“customers”** means, in relation to a licensee, the following (including any of them whose use or potential use of the network or carriage service is for the purposes of, or in connection with, a business) —

- (a) the persons to whom the network or carriage service is provided in the course of any business carried on as such by the licensee;
- (b) the persons to whom the licensee is seeking to secure that the network or carriage service is so provided;
- (c) the persons who wish to be so provided with the network or carriage service, or who are likely to seek to become persons to whom the network or carriage service is so provided;

**“customer premises equipment”** means electronic communications equipment and inside wiring located at a customer’s premises and connected to an electronic communications system at the network termination point;

- “document”** shall have the meaning specified in section 2 of the Evidence Act, (*Ch. 65*) and includes material whether in hard or electronic format;
- “domain names”** means any national system of identifying computer addresses in The Bahamas;
- “editorial responsibility”** means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services;
- “electronic communications”** means the conveyance, by the use of electrical, magnetic or electromagnetic energy, of signals of any description;
- “electronic communications policy objectives”** means the objectives set out in section 4;
- “electronic communications sector”** means the economic sector encompassing the provision of all electronic communications, including broadcasting;
- “electronic communications service”** includes the provision of any carriage service or content service;
- “facility”** means any element or physical component of a network;
- “individual operating licence”** shall have the meaning attributed to it in section 20(1);
- “interconnection”** means physical or logical linking of networks to allow the users of one network to communicate with users of another network or to access carriage services provided by another licensee;
- “licensee”** means—
- (a) in respect of an individual licence, the named licensee and any of its subsidiary undertakings notified to URCA in accordance with section 21(1); or otherwise
  - (b) the named licensee;
- “licence fee”** means the fee billed and collected by URCA under section 91;
- “Minister”** means the Minister charged with the responsibility for the electronic communications sector who shall be a minister other than the Minister for URCA and the Minister for the Corporation;
- “Minister for the Corporation”** means the Minister responsible for relations with the Corporation who shall be a minister other than the Minister and the Minister for URCA;

“**Minister for URCA**” means the Minister responsible for relations with URCA under the URCA Act who shall be a minister other than the Minister and the Minister for the Corporation;

“**named licensee**” means a person granted or issued a licence under Part IV of this Act or subject to general or specific conditions of entitlement introduced under section 8(2);

“**network**” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electromagnetic energy, of signals of any description; and
- (b) such of the following as are used by the person providing the network and in association with it, for the conveyance of the signals—
  - (i) apparatus, equipment or facilities comprised in the network;
  - (ii) apparatus, equipment or facilities used for the switching or routing of the signals; and
  - (iii) software and stored data.

“**network termination point**” means any physical point of connection forming part of a network at which other networks or customer premises equipment may be connected;

“**numbering plan**” means the plan made by URCA under section 79 which establishes a format of codes and subscriber numbers for routing carriage services to specific locations in The Bahamas and to facilitate switching to international destinations;

“**number portability**” means a facility whereby subscribers who so request can subject to the numbering plan retain their telephone number on a public network, independently of the licensee providing the service at the network termination point of a subscriber;

“**on-demand audiovisual media service**” means a content service provided to allow the user to view programmes at the moment selected by the user at his or her individual request on the basis of a catalogue of programmes selected by the audiovisual media service provider;

“**party political broadcast**” means a broadcast transmission that has been edited by or on behalf of a political party;

“**plurality of media ownership**” means the principle that media should as far as possible be owned by different persons to ensure diversity;

- “populated area”** means groups of permanent inhabited dwellings comprising ten or more households;
- “premium spectrum band”** means those frequencies falling within the range defined in the spectrum plan as the premium spectrum band;
- “programme”** means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by an audiovisual media service provider and whose form and content is comparable to the form and content of television broadcasting;
- “public land”** means Crown land and other public land belonging to the Government or any other public body and includes all highways and streets within The Bahamas but for the purposes of Part XIV (Land access) does not include buildings or other premises owned and occupied by the Government or by any other public body;
- “public network”** means any network provided wholly or mainly for the purpose of making services available to members of the public;
- “public service broadcasting”** means broadcasting by a person designated pursuant to section 61 in accordance with the provisions set out in section 60;
- “records”** means data or information showing the extent of any network or carriage service actually provided to a subscriber and any data or information used in the creation of a bill for a subscriber;
- “regulatory and other measures”** means all possible acts issued by the relevant body by whatever procedure including but not limited to directions, decisions, adjudications, orders and regulations;
- “relevant turnover”** means the gross receipts in money or money’s worth of the licensee or any person in respect of whom an exemption determination has been made under section 17 attributable to:
- (a) the provision of a network or carriage service or use of any radio spectrum under any licence or exemption determination; and
  - (b) a content service,  
including associated advertising revenue and other ancillary revenue, but after the deduction of sales rebates, in The Bahamas during the relevant financial year;
- “sector policy”** means the policy adopted pursuant to section 6 and section 112;
- “signal”** includes –

- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
- (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus;

“**SMP**” means 'significant market power' and shall have the meaning attributed to it under section 39(1);

“**SMP licensee**” means any licensee that is declared to have SMP by URCA under section 39;

“**spectrum licence**” means a licence issued under the terms of section 19;

“**spectrum plan**” means the national spectrum plan published pursuant to section 31;

“**standard spectrum band**” means those frequencies falling within the range defined in the national spectrum plan as the standard spectrum band;

“**state assets**” means any radio spectrum, the national telephone numbering system and the domain names system;

“**subscriber**” means any customer of a licensee who is party to a contract with the licensee for the provision of networks or carriage services;

“**subsidiary undertaking**” means any subsidiary company and, where that subsidiary company is a parent company, any subsidiary undertakings of that parent company; where “parent company” and “subsidiary company” shall have the meaning attributed to them in section 2 of the Companies Act (*Ch. 308*);

“**television broadcast**” means an audiovisual media service provided by an audiovisual media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

“**tribunal**” means the Utilities Appeal Tribunal established by the UAT Act;

“**UAT Act**” means the Utilities Appeal Tribunal Act, 2009;

“**unallocated spectrum band**” means those frequencies falling within the range defined in the spectrum plan as the unallocated spectrum band;

“**undertaking**” means –

- (a) a body corporate or partnership;
  - (b) an unincorporated association, or
  - (c) any person,
- carrying on a trade or business, with or without a view to profit;

“**universal service**” means those services specified pursuant to section 41;

“**universal service fund**” means a fund established under section 45;

“**universal service obligation**” means those obligations specified pursuant to section 42;

“**URCA fee**” means the fee to be determined by URCA under section 93;

“**URCA**” means the Utilities Regulation & Competition Authority established by the URCA Act;

“**URCA Act**” means the Utilities Regulation & Competition Authority Act;

“**voting control**” means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a licensee—

- (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
- (b) by an entitlement to exercise such a right to vote;
- (c) through a nominee; or
- (d) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights;

“**voting controller**” shall be any person who exercises voting control; and

“**wireless telegraphy**” means the emission or receipt of signals over a path of electromagnetic energy of a frequency not exceeding 3000 gigahertz and that path —

- (a) serves for the conveyance of messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus;
- (b) or is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects.

### 3. **Application of the Act.**

This Act binds the Crown.

## **PART II – ELECTRONIC COMMUNICATIONS POLICY**

### **4. Objectives.**

It is hereby affirmed that electronic communications perform an essential role in promoting the economic and social welfare of The Bahamas and that, subject to Part XIX, the electronic communications policy has as its main objectives –

- (a) to further the interests of consumers by promoting competition and in particular–
  - (i) to enhance the efficiency of the Bahamian electronic communications sector and the productivity of the Bahamian economy;
  - (ii) to promote investment and innovation in electronic communications networks and services;
  - (iii) to encourage, promote and enforce sustainable competition; and
  - (iv) to promote the optimal use of state assets, including radio spectrum; and
- (b) to further the interests of persons in The Bahamas in relation to the electronic communications sector by–
  - (i) promoting affordable access to high quality networks and carriage services in all regions of The Bahamas;
  - (ii) maintaining public safety and security;
  - (iii) contributing to the protection of personal privacy;
  - (iv) limiting public nuisance through electronic communications;
  - (v) limiting, any adverse impact of networks and carriage services on the environment; and
  - (vi) promoting availability of a wide range of content services which are of high quality.

### **5. Guidelines for regulation and Government measures.**

All policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic communications policy objectives and shall comply with the following guidelines–

- (a) market forces shall be relied upon as much as possible as the means of achieving the communications policy objectives;

- (b) regulatory and other measures shall be introduced –
  - (i) where in the view of URCA market forces are unlikely to achieve the electronic communications policy objective within a reasonable time frame, and
  - (ii) having due regard to the costs and implications of those regulatory and other measures on affected parties;
- (c) regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory; and
- (d) regulatory and other measures that introduce or amend a significant government policy or regulatory measure (including, but not limited to, the sector policy)–
  - (i) shall specify the electronic communications policy objective that is advanced by the policy or measure; and
  - (ii) shall demonstrate compliance with the guidelines set out in paragraphs (a), (b) and (c).

## **6. Sector policy.**

- (1) The Minister shall publish a sector policy in the Gazette setting out the strategic aims of the Government for meeting the electronic communications policy objectives, including, but not limited to –
  - (a) the priorities for liberalisation and sector regulation;
  - (b) the way in which the Government sees its role in the electronic communications sector;
  - (c) plans for the efficient use and management of state assets; and
  - (d) aspects of social policy, including the scope of universal service and public service broadcasting.
- (2) The sector policy shall have effect from the date that it is published in accordance with subsection (1).
- (3) Within three years of each publication of a sector policy under subsection (1) or section 112, URCA shall formulate and present a revised draft sector policy to the Minister.
- (4) Based on the revised draft sector policy, the Minister shall publish a new sector policy under subsection (1) within three months or such longer time as URCA and the Minister may agree from time to time.
- (5) If the Minister fails to start a consultation with URCA within the time period specified in subsection (4), URCA shall publish the revised draft sector policy on its website.



## **PART III – MANAGEMENT OF ELECTRONIC COMMUNICATIONS**

### **7. Functions of URCA.**

For the purposes of carrying out the electronic communications policy objectives, URCA has the following functions–

- (a) to regulate the electronic communications sector by exercising the powers given to it under this Act, and in particular to issue licences and exemption determinations in accordance with Part IV and to manage state assets;
- (b) to apply the competition law rules in the electronic communications sector under the terms of Part XI;
- (c) to represent the Government in regional and international organisations and obligations, when the Minister has officially delegated such tasks to it;
- (d) to charge licensees a fee under the terms of section 92;
- (e) to act on behalf of the Government in the billing and collection of the communications licence fee under section 91 and spectrum fees under section 93(3); and
- (f) to perform any other functions assigned to it by this Act or any other law.

### **8. General powers of URCA.**

- (1) For the purposes of carrying into effect the electronic communications policy objectives, URCA shall have the power to issue any regulatory and other measures and in particular shall –
  - (a) make determinations in accordance with the terms of sections 99 to 102 ;
  - (b) make adjudications in accordance with the terms of sections 103 to 106 ;
  - (c) impose conditions and penalties by order as specified in sections 95 to 98;
  - (d) issue regulations;
  - (e) issue directions, decisions, statements, instructions and notifications;
  - (f) publish and maintain registers or lists;
  - (g) issue technical rules and standards;
  - (h) for the purposes of enforcing compliance with this Act, institute prosecutions in accordance with the terms of this Act or any other law;

- (i) issue, suspend, vary or revoke licences, permits and exemptions under Part IV;
  - (j) conduct inquiries, investigations and oral hearings;
  - (k) require any licensee or licensees to furnish such information and submit such returns in relation to its operations at such intervals as it may require;
  - (l) conduct market investigations and market reviews and publish regular information and reports; and
  - (m) exercise any other powers assigned to it by this Act or any other law.
- (2) If URCA so decides by determination, it may replace the system of licences and exemptions by the introduction of a system of general and special conditions of entitlement, under such conditions and on such terms as it may determine.
- (3) General conditions of entitlement introduced under subsection (2) include—
- (a) conditions protecting the interests of consumers of carriage services that are made available to the public;
  - (b) conditions for securing service interoperability and for securing, or otherwise related to, network access;
  - (c) conditions for securing the proper and effective functioning of networks that are made available to the public;
  - (d) conditions for giving effect to determinations or regulations or other enactments issued by it;
  - (e) conditions relating to the use of networks and carriage services in the event of a disaster;
  - (f) conditions securing the protection of public health by the prevention or avoidance of the exposure of individuals to electromagnetic fields created in connection with the operation of a network; and
  - (g) conditions requiring compliance with relevant international standards.
- (4) The power for URCA to introduce general conditions of entitlement under subsection (2) does not include a power—
- (a) to set conditions that are made applicable according to the identity of the provider of the network or carriage service; or
  - (b) to set conditions that differ according to the identity of the provider of the network or carriage service to which they relate.
- (5) Special conditions of entitlement introduced under subsection (2) shall relate to—

- (a) the provision of universal services and the provision of information demonstrating compliance with a universal service obligation; and
  - (b) conditions on SMP licensees issued under section 40.
- (6) Special conditions of entitlement introduced under subsection (2) shall apply only to those persons specified by URCA.
- (7) On and from the date URCA exercises its power to introduce general conditions of entitlement under subsection (2)–
- (a) all references to "licensee" or any cognate term in this Act shall be construed as references to persons meeting the criteria specified by it to be subject to the terms and conditions of general entitlement, and
  - (b) all rights and liabilities of licensees shall continue and shall be construed consistently with the replacement of the system of licences and exemptions by the introduction of a system of general and special conditions of entitlement.

## **9. Powers of investigation.**

- (1) URCA may investigate one or more of the following –
- (a) any contravention;
  - (b) any alleged contravention; and
  - (c) any circumstance where it has grounds to suspect a contravention, of any provision of this Act and any regulatory or other measure issued under this Act, including any licence issued under this Act.
- (2) In conducting an investigation under subsection (1), URCA shall have the power –
- (a) to request in writing that any licensee and any undertaking subject to an investigation for a breach of Part XI provide the information and documents set out in the request within an amount of time specified by it; and
  - (b) to enter premises and inspect, copy and retain documents to the extent permitted under any search warrant obtained under section 10.

## **10. Search warrants.**

- (1) Where information provided by URCA (or other person) satisfies a magistrate that URCA has reason to believe that –
- (a) any person is contravening any part of this Act or any condition of any licence issued under it; and

- (b) entry to specified premises, vehicle, vessel, aircraft, hovercraft, buoy or beacon is necessary for the enforcement of the provisions of this Act,

the magistrate may issue a search warrant to a peace officer.

- (2) The peace officer to whom a warrant is issued may be accompanied by an authorised representative of URCA and may enter the specified premises, carry out search and inspection of those premises and test and seize any relevant apparatus, equipment or documents in accordance with the terms of the warrant.
- (3) Where under this section a person has the right to examine and test any equipment or apparatus on any premises or in any vehicle, vessel, aircraft, hovercraft, buoy or beacon, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vehicle, vessel, aircraft, hovercraft, buoy or beacon, to give him such assistance as he may reasonably require in the examination or testing of the equipment or apparatus.

## **11. Duty to consult.**

- (1) URCA shall follow the specific procedures set out at section 95 and section 104 when issuing regulatory and other measures referred to in those sections. Where no specific procedures are specified in this Act—
  - (a) URCA shall allow persons with sufficient interest a reasonable opportunity to comment on proposed regulatory and other measures which, in its opinion are of public significance;
  - (b) persons whose rights or interests may be materially adversely affected or prejudiced by the proposed regulatory and other measures shall have sufficient interest for the purpose of paragraph (a); and
  - (c) URCA shall give due consideration of those comments prior to introducing those measures.
- (2) Without prejudice to any regulatory and other measures being considered of public significance, those instruments referred to in section 13(2) shall be considered regulatory or other measures of public significance.
- (3) URCA shall, as soon as practicable after the Act comes into force, publish its standard procedures for seeking comments, which shall include—
  - (a) how consultations will be published;
  - (b) the minimum time for responding to consultations, which in ordinary circumstances shall be no less than thirty calendar days;
  - (c) how it will publish comments or summaries of comments received; and

- (d) guiding principles for determining when it may derogate from the standard procedures.

## **12. Duty to publish documents.**

- (1) Subject to section 14, URCA shall take proportional measures to make available to the public any regulatory and other measures which in its opinion, are of public significance and shall –
  - (a) publish such regulatory and other measures on its website as soon as practical after these are issued; ensure that its website includes a notification system for registered users; and take steps to ensure that the website is regularly updated and remains available to the public; and
  - (b) maintain copies of documents at its principal office for inspection by the public on request during normal business hours without charge.
- (2) URCA shall consider whether notice of regulatory and other measures of public significance should also be given by publication in one or more newspapers circulating in The Bahamas.
- (3) Without prejudice to any regulatory and other measures being considered of public significance, those instruments referred to in section 13(2) shall be considered regulatory or other measures of public significance.

## **13. Regulatory and other measures of public significance.**

- (1) A regulatory and other measure is likely to be of public significance if it relates to electronic communications services or networks and can lead to one or more of the following –
  - (a) involve a major change in the activities carried on by URCA under this Act;
  - (b) a significant impact on persons carrying on activities in those areas where URCA has functions under this Act; and
  - (c) a significant impact on the general public in The Bahamas.
- (2) Without prejudice to any regulatory and other measures being considered of public significance, the following instruments shall be considered regulatory or other measures of public significance for the purposes of sections 11 and 12 –
  - (a) the sector policy; and
  - (b) regulations, technical rules and standards.

**14. Confidentiality.**

- (1) Subject to subsection (2), URCA shall not be required to publish or otherwise divulge information that in its view would be commercially confidential.
- (2) Nothing in this Act shall limit URCA's duty to provide information to a court.

**15. Alternative Dispute Resolution (ADR) scheme.**

- (1) URCA shall, as soon as reasonably practicable after this Act comes into force, establish one or more alternative dispute resolution (ADR) schemes for disputes between licensees and between licensees and consumers or approve a scheme or schemes proposed by licensees under subsection (4).
- (2) In establishing ADR schemes, URCA shall request and take into account proposals from licensees.
- (3) ADR schemes may be comprised of—
  - (a) mediation, whether conducted by URCA, persons appointed by URCA or persons appointed by the parties to a dispute or a third party;
  - (b) arbitration of specific identified matters having limited scope by an expert appointed by URCA or the parties or a third party; or
  - (c) such other methods of alternative dispute resolution as URCA may determine.
- (4) URCA can approve an ADR procedure proposed by licensees if it is —
  - (a) fair, transparent and non-discriminatory;
  - (b) administered by persons who are independent of the licensees to whom the ADR scheme applies;
  - (c) administered in compliance with the electronic communications policy objectives; and
  - (d) designed to ensure that individuals to be employed under the ADR scheme as mediators, adjudicators, arbitrators or such other roles as may be contemplated have qualifications and experience to carry out such functions.
- (5) URCA may require those responsible for the management and operation of an approved ADR scheme to report to URCA regarding its functioning, and it must withdraw its approval if the ADR scheme ceases to meet any of the conditions in subsection (4).
- (6) An ADR scheme established under subsection (3)(b) may provide for binding decisions, including interim and conservatory measures.

- (7) Any ADR scheme established under this section shall not prejudice any rights under any other provision of this Act or any other law.

## **PART IV – LICENSING OF ELECTRONIC COMMUNICATIONS**

### **LICENCES AND EXEMPTION DETERMINATIONS**

#### **16. Requirement of a licence or exemption determination or general or special conditions of entitlement.**

- (1) Subject to subsection (2), it shall be an offence for a person to establish, maintain and operate a network or provide a carriage service, including by use of any radio spectrum.
- (2) A person shall not commit an offence under subsection (1) if–
- (a) that network is established, maintained and operated or that carriage service is provided in accordance with conditions specified pursuant to subsection (3);
  - (b) that person is acting under the authority of and in accordance with a licence granted under this Part; or
  - (c) that person is a member of a class in respect of which an exemption determination has been made under this Part.
- (3) A person shall not commit an offence under subsection (1) if that network is established, maintained or operated, or that carriage service is provided, under and in accordance with general or special conditions of entitlement, as determined by URCA under section 8(2).

#### **17. Exemptions.**

- (1) Subject to any requirement to obtain a licence or authorisation in relation to radio spectrum under section 35, persons shall be exempt for the purposes of section 16(2)(c) to the extent that their–
- (a) networks or carriage services are established, maintained and operated exclusively by or provided to–
    - (i) the Royal Bahamas Police Force;
    - (ii) the Royal Bahamas Defence Force;
    - (iii) the providers of fire brigade, ambulance, coast guard and other emergency services; or
    - (iv) military services duly authorised to operate in The Bahamas;

in the course of carrying out their duties;

- (b) networks' facilities are situated either –
  - (i) on land in The Bahamas occupied by the person who has established or maintained or operated that network; or
  - (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together,

and which are not established for, maintained by, operated for or provided to any third party for commercial gain, including for that third party's commercial gain;

- (c) facilities to receive sounds or visual images transmitted, by wireless telegraphy, from a transmitting station for general reception direct from that station or through the medium of a relay service licensed under this Act; or
  - (d) networks or carriage services are used on a foreign vessel or aircraft or any transit service passing through The Bahamas' territorial waters, skies or territories or landing in its seaports or airports, provided that the vessel or aircraft or transit service does not make a broadcast whilst passing through The Bahamas' territorial waters, skies or territories or landing in its seaports or airports.
- (2) For the purposes of section 16(2)(a) persons shall not and cannot be exempt to the extent that they provide networks or carriage services that –
    - (a) cannot be established, maintained and operated without land access pursuant to Part XIV; or
    - (b) require access to or the use of state assets.
  - (3) Persons using radio spectrum may only be exempt from the licensing requirements in this Part provided that –
    - (a) associated equipment does not or is unlikely to cause significant interference to networks or carriage services operated or provided by a licensee;
    - (b) the risk of harm or inconvenience to other users is outweighed by the benefits to the public from permitting usage on an unlicensed basis; and
    - (c) URCA is satisfied that such exemption would be compatible with relevant international recommendations and standards.
  - (4) Any exemption determination made by URCA shall be published, and unless revoked in accordance with any term contained in the exemption or in accordance with this Act or any other law, shall continue in force for



such period as may be specified in or determined by or under the exemption.

**18. Licences and exemption determinations generally.**

- (1) An exemption determination exempts a person or class of persons from the requirement of a licence under section 16(1) only in relation to the provision of such network or carriage service or the right to use radio spectrum as may be specified in the exemption determination and subject to the conditions of that exemption determination, if any.
- (2) Regardless of their form or content, licences and exemption determinations shall be and have effect as unilateral administrative actions of URCA pursuant to its powers under this Act and not bilateral agreements or contracts.
- (3) Subject to the terms of this Act, URCA may issue licences or exemption determinations under this section notwithstanding any law, agreement, contract, arrangement, licence or other provision in existence on the date on which this Act comes into force, including any prior licence.

**19. Individual and class licences.**

- (1) URCA may issue either of two types of licences—
  - (a) individual licences; and
  - (b) class licences.
- (2) An individual licence—
  - (a) shall be issued to the named licensee; and
  - (b) shall come into force pursuant to an application process conducted in accordance with section 26.
- (3) A class licence—
  - (a) shall be issued by means of a determination setting forth the terms and conditions of the licence and any applicable qualification criteria;
  - (b) shall be generally available to any qualifying person; and
  - (c) comes into force with respect to any person upon—
    - (i) effective registration in accordance with section 23; or
    - (ii) satisfaction or such other conditions as specified in the class licence.
- (4) URCA shall only grant an individual licence as opposed to promulgating a class licence or issuing an exemption determination if this is necessary to specify particular terms relevant to a particular licensee or if it considers that other reasons necessary or expedient to further the electronic

communications policy objectives or make the grant or an individual licence necessary.

**20. Power to grant individual licences with conditions.**

- (1) URCA shall publish the conditions of a standard network and carriage services individual licence (the “individual operating licence”) to comprise substantially the same conditions for all licensees, subject to the provisions of Part VI and Part VII.
- (2) URCA may make such modifications, variations or restrictions to any of the standard individual operating licence conditions as it requires for reasons justified by reference to the communications policy objectives.
- (3) URCA may grant a licence for the use of radio spectrum subject to such conditions as it considers appropriate under the communications policy objectives.
- (4) Conditions of licences that relate to the same or similar networks or carriage services shall not unfairly discriminate between licensees.

**21. Individual operating licences and subsidiary undertakings.**

- (1) The licensee under an individual operating licence shall comprise the named licensee and any subsidiary undertaking of the named licensee listed in the application for a licence or notified to URCA from time to time.
- (2) For the purposes of subsection (1), a notification shall be in writing and shall identify the relevant subsidiary undertaking or subsidiary undertakings. Such notification shall have effect fourteen calendar days after it is received by URCA.
- (3) URCA shall be entitled to refuse to grant an individual operating licence on the grounds that a company of which the applicant is a subsidiary undertaking has an individual operating licence or is a company that requires or has applied for an individual operating licence
- (4) A subsidiary undertaking of a named licensee shall cease to be notified for the purposes of subsection (1)–
  - (a) fourteen calendar days after URCA receives notice in writing from the named licensee or the relevant subsidiary undertaking excluding the subsidiary undertaking from the individual operating licence; or
  - (b) immediately subsequent to an order excluding the subsidiary undertaking from the individual operating licence.

**22. Class licences not requiring registration.**

URCA may establish one or more class licences not requiring registration. Any person meeting the specified qualification criteria can provide the specified network or carriage service or use the specified radio spectrum in accordance with the published conditions in the class licence.

**23. Class Licences requiring registration.**

- (1) In the event that URCA establishes one or more class licences requiring registration, It must publish a standard registration form for class licences issued under section 19(3)(c)(i).
- (2) URCA shall publish guidelines for registration and deregistration of class licensees.
- (3) Any person meeting the specified qualification criteria published by URCA for a class licence requiring registration may register and remain registered for that class licence by filing with URCA the appropriate complete, correct and signed registration form and paying any application or other fees if so prescribed by URCA.
- (4) URCA must provide written notice of non-effective registration to a person filing a registration form under subsection (3) if—
  - (a) the person fails to qualify with any criteria applicable to, and so is ineligible for, the relevant class licence;
  - (b) the registration form is incomplete, incorrect or unsigned; or
  - (c) the fee prescribed has not been paid.
- (5) Unless URCA provides the notice under subsection (4), registration shall take effect forty-five calendar days after filing
  - (a) the complete, correct and signed registration form; or
  - (b) a completed, corrected or signed registration form filed in response to a notice under subsection (4).
- (6) URCA may not restrict the number of persons that may register under a class licence.

**24. Other requirements not affected.**

- (1) Nothing in this Part shall be construed to allow a licensee to provide a network or carriage service or to use radio spectrum in breach of any applicable provision of any law, any regulatory or other measure or to grant it rights not granted in the licence.
- (2) An exemption from licensing requirements shall not affect the requirement for persons providing a network or carriage service or using

radio spectrum to comply with all other applicable provisions of this Act, and any regulatory or other measure made or issued under this Act.

## **PROCEDURE**

### **25. Procedural regulations.**

Subject to sections 23 and 26, URCA may make regulations with respect to one or more of the following—

- (a) procedures for and information required in applications for individual licences and registrations for class licences;
- (b) specific factors to be taken into account for evaluating whether an applicant is a fit and proper person for the purposes of section 27(3)(c); and
- (c) indicative time periods for the grant of individual licences or registration for class licences.

### **26. Individual licence applications and renewals.**

- (1) Persons wishing to apply for an individual licence or licences must submit an application in the form and manner and with the information specified by URCA. URCA may specify that a fee is payable on application.
- (2) Where reasonably practicable, URCA must treat a person seeking an individual licence to provide a network or carriage service and the right to use radio spectrum for such network or carriage service under a single or coordinated application or registration process or other arrangement which minimises the administrative burdens and uncertainties for such persons of dual application or registration processes.
- (3) Persons wishing to apply for an individual licence must—
  - (a) be legal entities duly incorporated in The Bahamas;
  - (b) conduct the administration and management of the business from premises in The Bahamas;
  - (c) be a fit and proper person to establish, maintain and operate a network or carriage service or use radio spectrum;
  - (d) demonstrate to the satisfaction of URCA that they have sufficient intention, financial strength and resources to meet their obligations under this Act and to provide networks or carriage services in an effective manner and consistent with the electronic communications policy objectives; and
  - (e) meet any other requirements (including but not limited to the provision of information and data) that URCA may require.
- (4) URCA shall review all applications for individual licences and within thirty calendar days of receipt of any application—

- (a) approve the application and grant a licence or licences;
  - (b) reject the application specifying the reasons for the rejection; or
  - (c) request further information necessary or desirable to evaluate the application. In this case URCA shall have a further one (1) calendar month from the date of receipt of that information to evaluate the licence application under this subsection (4).
- (5) If the Minister, exercising powers under section 30, or URCA, exercising powers under section 29, intends to restrict the number of individual licences to be granted for the right to use the same or similar radio spectrum, then the Minister or URCA, as appropriate, shall select such licensees for those individual licences pursuant to a competitive selection process.
- (6) A competitive selection process under subsection (5) shall provide for selection by the Minister or URCA, as appropriate, based upon objective criteria, including—
- (a) applicants' financial bids, whether submitted with applications or made in an auction;
  - (b) relevant experience, capability or other qualifications of applicants;
  - (c) commitments of applicants with respect to the type, quality and geographical coverage of the relevant services or other factors; or
  - (d) any combination of the foregoing.
- (7) Individual licences shall be for a term of not less than five years, except for licences allocating radio spectrum which is intended for temporary use or for testing or trialling new technology.
- (8) URCA shall, on application of a licensee under an individual operating licence made no later than one (1) year prior to the end of the term of the licence, renew an individual operating licence unless the licensee has repeatedly contravened, or failed to cure a material contravention of this Act or any other regulatory measure, including the conditions of the individual operating licence.
- (9) Nothing in subsection (8) shall restrict URCA from amending the terms of an individual licence that is to be renewed in order to conform such licence to determinations, adjudications, orders or regulations then in force.

## **27. Amendment and revocation of licences.**

- (1) URCA may by determination, on its own motion or on the written application of the relevant licensee, modify, vary, restrict the conditions of, or revoke, any licence granted to a licensee if—

- (a) it is necessary to comply with or conform to international treaties, commitments or standards or the laws of The Bahamas;
  - (b) it is necessary to further the communications policy objectives and there is justification for the causing of any hardship that may result to that licensee;
  - (c) the licensee has repeatedly contravened, or failed to cure a material contravention of this Act or any other regulatory measure, including any condition of its licence;
  - (d) the licensee made a statement or omitted to make a statement resulting in a material misrepresentation in its licence application or registration;
  - (e) the licensee has entered into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a competent court or tribunal for its compulsory winding-up or dissolution;
  - (f) the licensee is not providing the network or carriage service authorised by and specified in its licence and URCA is satisfied that the licensee does not have the intention or the financial strength and resources to provide such network or carriage service;
  - (g) it is in accordance with the procedure specified in section 95; or
  - (h) it is in accordance with the terms of the licence.
- (2) Subject to any determination being suspended pursuant to section 102(2), any determination made by URCA to modify, vary, restrict or revoke a licence shall take effect on the date specified which shall not be less than thirty calendar days after the date of written notice given to a licensee affected by that determination, and such licensee may before the date specified in the notice given appeal to the Tribunal against such modification, variation, restriction or revocation.
- (3) URCA may provide that modifications, variations, restrictions or revocations of class licences apply only to specified licensees or to all licensees under the class licence.
- (4) In modifying, varying, restricting or revoking any licence, URCA must take into account continuity of service to users.

## **28. Maintenance of public register.**

URCA shall keep a register in electronic or paper form of all individual licensees, including named licensees and relevant subsidiary undertakings and all registered class licensees. The register shall be published under the procedure set out in section 12.

## **PART V – RADIO SPECTRUM MANAGEMENT**

### **29. Management of the radio spectrum.**

Subject to section 30, URCA has the exclusive right to manage, allocate and assign all frequencies in the radio spectrum in The Bahamas.

### **30. Minister's responsibilities.**

- (1) The Minister shall be responsible for deciding the method of allocating frequencies in the premium spectrum band of the spectrum plan.
- (2) The Minister shall set spectrum fees in accordance with section 94(1) or shall prescribe the method by which such fees are set.

### **31. Spectrum plan.**

- (1) URCA shall publish the spectrum plan approved in accordance with subsection (5) or subsection (6).
- (2) The spectrum plan shall be consistent with any applicable international treaties, commitments or standards including without limitation those of the International Telecommunications Union and shall take into account relevant international recommendations.
- (3) The spectrum plan shall specify those frequency bands that are premium spectrum bands for the purposes of section 30.
- (4) Within three years of each publication of a spectrum plan under subsection (1), URCA shall formulate, in consultation with the Minister, and submit a revised spectrum plan to the Minister.
- (5) The Minister may approve or amend the proposed spectrum plan within forty-five calendar days of submission by URCA.
- (6) If the Minister does not approve or amend the spectrum plan within the time period specified in subsection (5), URCA will publish the spectrum plan for the purposes of subsection (1).

### **32. Objectives of radio spectrum management.**

- (1) In performing functions and duties and exercising powers under this Part, the Minister and URCA must ensure that radio spectrum is managed and used in a manner that—
  - (a) is open, objective, transparent and non-discriminatory;
  - (b) is economically efficient and facilitates the evolution of new technologies and electronics communications services whilst taking into account in particular investment in existing equipment

configured for specific radio spectrum and the cost of migration to other radio spectrum; and

- (c) meets the needs of government departments and agencies referred to in section 34(1).
- (2) URCA may rely on voluntary, industry standards in lieu of regulations.
- (3) URCA shall take enforcement action promptly to ensure effective protection of licensed radio spectrum bands from interference and where necessary the management and use of the radio spectrum.

### **33. Deliberate interference.**

A person commits an offence if he or she uses any communications equipment for the purpose of interfering with wireless telegraphy.

### **34. Consultation on radio spectrum matters.**

URCA –

- (1) may establish a liaison committee to address allocation and assignment of radio spectrum for use by government departments and agencies. The following bodies are to be duly represented –
  - (a) the Royal Bahamas Police Force;
  - (b) the Royal Bahamas Defence Force;
  - (c) fire brigade, ambulance, coast guard and other emergency services;
  - (d) The Bahamas Maritime Authority; and
  - (e) the Civil Aviation Department.
- (2) shall conduct public inquiries and consult with electronic communications service providers and network operators in The Bahamas about the use and management of radio spectrum; and
- (3) shall coordinate the use of radio spectrum with other countries and international users and organisations.

### **35. Radio spectrum planning, allocation and assignment.**

- (1) URCA may by determination establish one or more of the following–
  - (a) exemptions from a requirement to be licensed;
  - (b) class licences; and
  - (c) requirements for radio spectrum individual licences.
- (2) URCA can establish–
  - (a) requirements for authorisation of use of radio equipment, including technical requirements and standards in relation to radio interference; and



- (b) procedures, conditions and restrictions applicable to the use of radio spectrum and radio equipment.

**36. Vacation of radio spectrum without compensation.**

- (1) URCA may by determination, made on application or on its own motion, without compensation, declare vacant any radio spectrum that has been assigned to a person, and may assign such spectrum to a different person on any of the grounds in subsection (2).
- (2) The grounds referred to in subsection (1) are–
  - (a) the relevant radio spectrum is not in significant use and there is demonstrable demand from other persons for making efficient use of all or part of such radio spectrum;
  - (b) such vacation or reassignment is necessary or appropriate to comply with or conform to international treaties, commitments, or standards or the laws of The Bahamas;
  - (c) the person previously assigned the relevant radio spectrum agrees to vacate it;
  - (d) the person previously assigned the relevant radio spectrum has contravened a determination, adjudication or order relating to the management or operation of radio spectrum;
  - (e) the person previously assigned the relevant radio spectrum made a statement or omitted to make a statement resulting in a material misrepresentation in relation to the assignment to it of the radio spectrum; and
  - (f) the person previously assigned the relevant radio spectrum has entered into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a competent court or tribunal for its compulsory winding-up or dissolution.

**37. Vacation of radio spectrum with compensation.**

- (1) URCA may by determination, made on application or on its own motion, require a person to vacate radio spectrum previously assigned to it, and shall assign or make available for assignment such radio spectrum to a different person on grounds other than those in section 36(2) if–
  - (a) necessary or expedient to further the electronic communications policy objectives; and
  - (b) there is justification for the causing of any hardship that may result to any licensee.
- (2) A determination made under subsection (1), may be conditional on payment by the new persons assigned the relevant radio spectrum of

compensation (the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) to the person required to vacate radio spectrum under subsection (1).

- (3) Subject to any determination being suspended pursuant to section 102(2), any determination made to vacate radio spectrum shall take effect on the date specified by URCA which shall not be less than thirty calendar days after the date of written notice given by URCA to a licensee affected by that determination and such licensee may before the date specified in the notice given by URCA appeal to the Tribunal against such determination.
- (4) URCA must provide written notice to a person previously assigned radio spectrum that it intends to vacate the relevant radio spectrum pursuant to subsection (1) and such person may within thirty calendar days appeal to the Tribunal for the determination of his interest or right, the legality of the vacation of the spectrum and the reasonableness of the time given to vacate the spectrum, the amount of any compensation and the period of time within which it shall be paid.

### **38. Spectrum trading.**

- (1) Subject to subsection (2), a licensee shall not be permitted to assign the use of radio spectrum to a third party.
- (2) URCA may publish rules and regulations relating to the transfer of radio spectrum rights by a licensee on a permanent or temporary basis to a third party.

## **PART VI –SMP LICENSEES**

### **39. Regulator's power to determine that licensees have SMP.**

- (1) URCA may at any time determine that a licensee is an SMP licensee if the licensee, individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers.
- (2) URCA shall establish and publish criteria–
  - (a) relating to the definition of markets in the electronic communications sector; and
  - (b) against which market power may be assessed,for the purpose of making a determination under subsection (1).

- (3) URCA's criteria referred to in subsection (2) shall include references to—
  - (a) the licensee's market share;
  - (b) the licensee's ability to influence market conditions;
  - (c) the licensee's access to financial resources;
  - (d) the licensee's experience in providing products to the market; and
  - (e) any other criteria considered relevant by URCA.

#### **40. Conditions on SMP licensees.**

- (1) Notwithstanding the special responsibility of every dominant licensee under section 69, URCA may impose specific conditions on licensees determined to have SMP in the relevant market or relevant markets, including obligations relating to—
  - (a) cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems;
  - (b) the publication of a reference offer or offers ensuring equivalence of access and/or interconnection to any of those services and/or facilities in which the licensee has SMP at tariffs based on the licensee's costs;
  - (c) the submission of regulatory accounts or financial statements separating out the key business activities of the licensee;
  - (d) retail price regulations;
  - (e) sharing of infrastructure, facilities and systems used for the provision of electronic communications services;
  - (f) technical compatibility of and access to conditional access systems used in the provision of content;
  - (g) offering services to the businesses which comprise the licensees and their parent companies on a non-discriminatory, commercial basis;
  - (h) provision of standard terms of business, which should be published and accessible to customers;
  - (i) provision of service level guarantees with associated compensation payment to retail customers; and
  - (j) such other obligations as URCA may consider necessary in pursuance of the electronic communications policy objectives and the sector policy.
- (2) Without prejudice to section 116(2), prior to imposing any obligations under subsection 40(1), URCA shall—
  - (a) review the market or markets in which the licensee has SMP; and

- (b) consider the regulatory burden and the benefits to consumers of imposing any such obligation on a licensee.
- (3) Prior to imposing any obligations under subsection 40(1) URCA–
  - (a) shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits;
  - (b) shall take into account the investment made by the relevant licensee and allow the licensee a reasonable rate of return on capital efficiently employed, taking into account the risks involved;
  - (c) shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a determination of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs; and
  - (d) may also take account of prices available in comparable markets.
- (4) SMP licensees shall–
  - (a) not unduly discriminate against particular persons or a particular description of persons in relation to electronic communications services offered by them. Nothing done in any manner by an SMP licensee shall be regarded as undue discrimination if and to the extent that the licensee is required or expressly permitted to do such thing in that manner under this Act or any other enactment or any instrument issued pursuant to this Act or any other enactment;
  - (b) provide technical specifications, or other relevant information about any interconnection, essential facilities or other mandated wholesale electronic communications services on a reasonable and timely basis, when the information is required by another licensee to provide its licensable services and when the information is not readily available from other sources; and
  - (c) not adopt technical specifications for a network that prevents interconnection or interoperability with a network of a competitor.
- (5) Where an SMP licensee is made subject to an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on capital efficiently employed shall lie with the SMP licensee concerned. For the purpose of calculating the cost of efficient provision of electronic communications services, URCA may direct the SMP licensee to employ specific cost accounting methods or URCA may use cost accounting methods independent of those used by the relevant licensee. URCA may require the SMP licensee to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

## **PART VII – UNIVERSAL SERVICE**

### **41. Determination of universal service obligations.**

- (1) The Minister shall specify in the sector policy or in a notice published in the Gazette the universal services and the universal service obligations.
- (2) The Minister may at any time specify that certain electronic communications services shall no longer constitute the subject of a universal service obligation.
- (3) In specifying any universal service obligations, the Minister shall take into account the economical and technical feasibility of such obligations.

### **42. Determination of universal service provider.**

- (1) Subject to the exemptions provided in subsection (4), licensees designated under subsection (3) shall provide those universal services for which they are designated providers to any person in The Bahamas who requests such a service and meets the requirements specified pursuant to section 41.
- (2) URCA shall determine that a licensee or licensees are required to meet all or some of the universal service obligations.
- (3) URCA shall publish its reasons for determining that a licensee is a universal service provider.
- (4) URCA may determine a licensee to be a universal service provider under subsection (2) pursuant to a tender for universal service funding under section 43.
- (5) Designated licensees shall be relieved of any universal service obligations in respect of any person–
  - (a) where the person's premises are not in a populated area; or
  - (b) pursuant to any order or regulation issued by URCA..

### **43. Universal service benefits.**

- (1) A licensee subject to a universal service obligation is entitled to apply for one or 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.
- (2) URCA shall consider all applications and shall determine whether the licensee is entitled to funding.

**44. Universal service funds.**

- (1) URCA may establish by determination or regulation a universal service fund or universal service funds, into which the following monies shall be paid—
  - (a) any money appropriated by URCA for the purpose;
  - (b) any grant, contribution or loans from any international organisations or donors; and
  - (c) all money contributed by the Government for this purpose.
- (2) When establishing one or more universal service funds, URCA shall 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.
- (3) Subject to subsection (2), the universal service funds shall be administered by URCA and may only be applied 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 services exceeds the revenue derived from those services.
- (4) URCA may levy charges on licensees or content providers to contribute to one or more universal service funds.
- (5) URCA may exempt any licensee or licensees or content provider or content providers from paying the charge set out in subsection (4) if its relevant turnover from a similar or related sector is below a designated threshold or if it does not operate in a similar or related sector to the universal service to which the fund relates.

## **PART VIII – CONSUMER PROTECTION**

**45. Duty to enforce consumer protection provisions.**

- (1) URCA shall have a duty to monitor and enforce the consumer protection conditions in the licences.
- (2) URCA may issue general regulations relating to the protection of consumers. These regulations might include—
  - (a) the standard of service, quality and safety of the carriage services and equipment provided;
  - (b) the handling of complaints made by persons who are consumers in the market for such services and ancillary equipment; and

- (c) any other matter appearing to it to be necessary for securing the effective protection for persons who are consumers in the markets for carriage services or networks.

**46. Licensees' key performance indicators.**

Licensees shall monitor their performance against any key performance indicators that may be set out in the licences or any regulations issued by URCA. Pursuant to any such request from URCA, licensees shall –

- (a) publish their performance against any such key performance indicators in the manner required by URCA; and
- (b) provide details of their performance against such key performance indicators in the manner required by URCA.

**47. Unsolicited communications.**

URCA may, by determination or regulation, regulate or prohibit the use of a network or carriage service to provide unsolicited communications in order to reduce or eliminate annoyance, inconvenience or anxiety.

**48. Confidentiality of user information.**

- (1) A licensee may disclose a subscriber's name, address and listed telephone number in a printed or electronic telephone directory except where the subscriber specifically requests that his or her details be excluded from the directory.
- (2) URCA may by determination or regulation require a licensee to retain or prohibit a licensee from retaining specified information relating to subscribers, including information about billing, beyond a specified period.

**49. Access by public bodies.**

Nothing in this Act shall be interpreted to prohibit or infringe upon the rights of public bodies under the laws of The Bahamas to exercise such rights to access otherwise confidential information or communications of subscribers, customers or consumers in a lawful manner.

**50. Telephone directories.**

URCA may, by determination or regulation, require a licensee to provide its subscribers with directory assistance in accordance with such conditions as URCA may from time to time prescribe.

**51. Access to subscribers' premises.**

- (1) A licensee must operate, maintain in good working order and repair all facilities belonging to or provided by it and located on a subscriber's property.
- (2) A licensee has the right to enter a subscriber's premises within business hours if the licensee's facilities are located within such premises upon the condition that—
  - (a) the licensee has given the subscriber reasonable notice; and
  - (b) the licensee's personnel are properly identified and qualified.
- (3) A licensee who is refused access under subsection (2) may apply for an order of any competent court to enforce its right under that subsection.

## **PART IX – CONTENT REGULATION**

**52. General powers to regulate content services.**

URCA may by determination issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in The Bahamas.

**53. Development of codes of practice.**

- (1) URCA shall issue codes of practice that are to be observed by licensees providing audiovisual media services in The Bahamas.
- (2) Codes of practice issued under subsection (1) may include standards which might include one or more of the following –
  - (a) methods of ensuring that the protection of children from exposure to programme material which may be harmful to them;
  - (b) promoting accuracy and fairness in news and current affairs programmes;
  - (c) preventing the broadcasting of programmes that simulate news or events in a way that misleads or alarms the audience;
  - (d) in the case of codes of practice developed for broadcasting –
    - (i) time devoted to advertising;
    - (ii) standards requiring advertisements to be distinguished from programme content;
    - (iii) the kinds of sponsorship announcements that may be broadcast; and



- (iv) the kinds of sponsorship announcements that particular kinds of programmes may carry;
  - (e) captioning of programmes for the hearing impaired;
  - (f) teletext and ancillary services;
  - (g) party political broadcasts;
  - (h) sports and national events broadcasting;
  - (i) must carry regulations; and
  - (j) national emergency and disaster conditions.
- (3) In developing codes of practice relating to matters referred to in subsection (2) the following matters will be taken into account –
- (a) the portrayal in programmes of –
    - (i) physical and psychological violence;
    - (ii) sexual conduct and nudity;
    - (iii) the use of drugs, including alcohol and tobacco; and
    - (iv) matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;
  - (b) the use in programmes of offensive language.

#### **54. Complaints.**

URCA shall as part of any code of practice issued under section 53(1), determine procedures to be observed by all or some of those persons identified in section 53(1) for –

- (a) handling complaints from the public about programme content or compliance with codes of practice; and
- (b) reporting to URCA on complaints so made.

#### **55. Power to delegate.**

- (1) URCA shall have the power to allow industry groups to develop, in consultation with URCA and taking into account any relevant research conducted by URCA, codes of practice that are to be applicable to the content provision operations of each of those sections of the industry and to monitor compliance with such codes.
- (2) Codes of practice developed under this section shall not have effect until published by URCA.

**56. Limitation of URCA's power.**

URCA must not determine that, before programmes are broadcast, the programmes, or a sample of the programmes, be approved by URCA or by a person or body appointed by URCA.

**57. URCA to maintain register of codes of practice.**

URCA shall publish a register in which it includes all codes of practice developed under sections 53 and 55.

**58. Retention of content.**

URCA may issue regulations relating to the procedures acceptable to URCA for the retention of recordings in sound and vision of any content to which this Part applies. These regulations may include –

- (a) the time period for which such recordings must be retained;
- (b) the standard or quality of such recordings;
- (c) the manner in which such recordings must be provided to URCA;
- (d) a requirement to retain the script or transcript of any programme;
- (e) an obligation to record and retain the recordings of all programmes broadcast by a licensee.

**59. Civil penalty for non compliance.**

A person who fails to comply with any regulatory or other measures under this Part IX shall be liable to pay a fine to URCA under section 109.

## **PART X – PUBLIC SERVICE BROADCASTING**

**60. Public service broadcasting.**

- (1) As soon as practically possible after this Act comes into force, taking into account the electronic communications policy objectives, URCA shall review the current provisions of the Broadcasting Act and publish a report with recommendations to the Minister about necessary amendments to the Broadcasting Act, the role of public service broadcasting in The Bahamas, the remit and corporate governance rules of the Corporation and the preferred method of funding any public service broadcasting obligations that are recommended.
- (2) Based on the recommendations presented by URCA under subsection (1) and after consultation with URCA, the Minister shall specify in the sector policy or in a notice published in the Gazette the public service broadcasting obligations within three months of submission by URCA of

the recommendations or such time as URCA and the Minister may agree from time to time.

- (3) If the Minister does not start a consultation with URCA within the time period specified in subsection (2) URCA shall publish the public service broadcasting obligations in accordance with URCA's recommendations submitted under subsection (1).

#### **61. Public service broadcaster.**

Subject to section 115, URCA may designate a public service broadcaster –

- (a) if a broadcaster assumes a public service obligation pursuant to a tender for public service broadcasting funding under section 63; or
- (b) if so directed by the Minister.

#### **62. Public service broadcasting benefits.**

- (1) A public service broadcaster is entitled to apply for one or more of the following public service broadcasting benefits –
  - (a) public funding from the public service broadcasting fund; and
  - (b) such other benefits as may be determined by URCA from time to time.
- (2) URCA shall consider all applications and shall determine whether the public service broadcaster is entitled to funding.

#### **63. Public service broadcasting fund.**

There shall be established a fund called the public service broadcasting fund into which the following monies shall be paid –

- (a) any money appropriated by Parliament for the purposes, including the imposition of a levy for the purposes if appropriate; and
- (b) any grant, contribution or loans from any international organisation or donors.

#### **64. Funding pre-conditions.**

- (1) In order to obtain public service broadcasting funding, the public service broadcaster shall comply with the requirements imposed by URCA, including the preparation and publication of a plan for meeting the public service broadcasting objectives for the forthcoming year (the “Plan”).
- (2) URCA shall set any requirements under subsection (1) in accordance with any conditions that may be imposed by Parliament.
- (3) The Plan, published pursuant to subsection (1) shall–

- (a) include a series of key performance indicators against which the public service broadcaster shall measure its performance during the financial year; and
- (b) set out the required budget based upon the public service broadcaster's target activities for the forthcoming year.

## **PART XI – COMPETITION PROVISIONS**

### **65. Matters in relation to which URCA has competition functions.**

In this Part references to communications matters are references to any one or more of the following –

- (a) the provision of networks;
- (b) the provision of carriage services;
- (c) the provision or making available of services or facilities which are provided or made available –
  - (i) by means of, or in association with the provision (by the same person or another) of, a network or carriage service; or
  - (ii) for the purpose of facilitating the use of any network or carriage service (whether provided by the same person or another); and
- (d) content services, including broadcasting and related matters.

### **66. Principles to be applied in determining questions.**

So far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition in the matters specified in section 65 are dealt with in a manner which is consistent with international best practice.

## **ANTICOMPETITIVE AGREEMENTS**

### **67. Prohibition of agreements and practices preventing, restricting or distorting competition.**

- (1) Agreements between licensees, or between a licensee and another undertaking, decisions by associations (whether formal or informal) of undertakings or concerted practices which relate to communication matters and which –
  - (a) may affect trade within The Bahamas; and

- (b) have as their object or effect the prevention, restriction or distortion of competition in markets in The Bahamas,  
are prohibited unless they are exempt in accordance with the provisions of this Part.
- (2) Subsection (1) applies in particular to agreements, decisions and practices which –
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control markets, technical development, or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;  
or
  - (e) make the conclusion of contracts subject to acceptance by any other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in The Bahamas.
- (4) Any agreement, decision or practice which is prohibited by subsection (1) is void.
- (5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association (whether formal or informal) of undertakings or a concerted practice (with any necessary modification).

## **68. Exempt agreements.**

- (1) URCA may exempt agreements or categories of agreements from the prohibition in section 67 if the agreement–
  - (a) contributes to–
    - (i) improving the production or distribution of electronic communications services; or
    - (ii) promoting technical or economic progress,  
in The Bahamas, while allowing consumers a fair share of the resulting benefit, and
  - (b) does not–
    - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; or

- (ii) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.
- (2) In any proceedings in which it is alleged that the prohibition in section 68 is being or has been infringed, any undertaking claiming the benefit of subsection (1) shall bear the burden of proving that the conditions of that subsection are satisfied.

## **ABUSE OF A DOMINANT POSITION**

### **69. Abuse of a dominant position.**

- (1) Any conduct on the part of one or more licensees which relates to the electronic communications sector and which amounts to an abuse of that licensee's or those licensees' dominant position in a market in The Bahamas is prohibited.
- (2) Conduct may, in particular, constitute such an abuse if it consists of –
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting markets or technical development or the provision of services to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
  - (e) without objective justification, limiting or impeding access to a network or a carriage service in circumstances where access is essential for the provision of an electronic communications service by another operator.

## **MERGER CONTROL**

### **70. URCA to regulate changes in control in relation to licensees.**

- (1) Without prejudice to –
  - (a) any other law; or
  - (b) any further obligations in a licence to notify URCA of changes in control,

no change in control of a licensee can be implemented without obtaining the prior written approval of URCA in accordance with this Part.

- (2) Failure to obtain prior written approval of URCA shall expose the acquirer and the licensee to one or more of the following –
  - (a) the consequences stated in section 109; and
  - (b) an order under section 95 for the acquirer to divest or procure the divestment of the licensee or any part of the licensee as a going concern to a purchaser on terms of sale approved by URCA.
- (3) The acquirer or the licensee must notify URCA within seven calendar days of –
  - (a) concluding an agreement; or
  - (b) announcing a public bidthat would result in a change of control of a licensee.
- (4) The notification referred to in subsection (3) shall be in writing and in such form and manner as may be specified by URCA. It shall include –
  - (a) a description of the terms of the transaction;
  - (b) information about the acquirer and the licensee, each of their shareholders and any person being the beneficial owner or voting controller of more than fifteen percent of the voting shares of either or both of the acquirer and the licensee; and
  - (c) financial information of the persons involved in the transaction, including –
    - (i) annual revenues from the provision of networks or carriage services or content services identified by specific product and geographic markets;
    - (ii) copies of the most recent annual and quarterly reports and financial statements; and
    - (iii) a description of the communications market or markets in which the persons involved in the transaction operate.

## **71. Change in control.**

A “change in control” shall occur in relation to a licensee when a person, either alone or with any affiliated company –

- (a) acquires control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that strategic decisions of the licensee are conducted in accordance with the wishes of that person;

- (b) becomes the beneficial owner or voting controller of more than thirty percent of the voting shares in the licensee; or
- (c) becomes the beneficial owner or voting controller of more than fifteen percent of the voting shares but not more than thirty percent of the voting shares in the licensee concerned unless that person, either alone or with any affiliated company –
  - (i) is not, or does not concurrently become, the beneficial owner or voting controller of more than five percent of the voting shares in any other licensee; and
  - (ii) does not have the power (including by the holding of voting shares), or does not concurrently acquire control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any other licensee or any other corporation or otherwise, to ensure that the affairs of such other licensee are conducted in accordance with the wishes of that person.

**72. Questions to be determined.**

URCA, on receiving a notification made under section 70(4), shall form an opinion whether a proposed change of control of a licensee –

- (a) would have, or be likely to have, the effect of substantially lessening competition in a market in The Bahamas; and
- (b) in the case of a change of control involving a media public interest, whether the change of control would have an effect, or would be likely to have an effect contrary to the public interest.

**73. Principles to be applied in appraising a change of control.**

- (1) For the purposes of section 72(a) in determining whether to give its consent, URCA shall take into account in particular–
  - (a) the promotion of sustainable competition in the electronic communications sector within The Bahamas or part of The Bahamas in view of, among other things, the structure of all the markets concerned and the actual or potential competition from undertakings located either within or outside The Bahamas; and
  - (b) the market position of the licensee or licensees concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided



that it is to consumers' advantage and does not form an obstacle to competition.

- (2) To the extent that the creation of a joint venture or arrangement involving one or more licensees has as its object or effect the coordination of the competitive behaviour of licensees that remain independent, the creation of such joint venture shall be considered as though it were a change of control under section 71. In making this appraisal, URCA shall take into account in particular –
  - (a) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and
  - (b) whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

#### **74. Media public interest.**

- (1) For the purposes of section 72(b) a change of control shall be deemed to involve a media public interest if at least one of the persons involved in the transaction is a media enterprise.
- (2) A media enterprise is an enterprise involving either or both of–
  - (a) broadcasting; and
  - (b) publishing newspapers.
- (3) In determining whether a proposed change of control would be contrary to the public interest for the purpose of section 72(b), URCA shall consider–
  - (a) the need for the accurate presentation of news and the free expression of opinion in media;
  - (b) the need, in relation to every different audience in The Bahamas, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;
  - (c) the need for the availability throughout The Bahamas of a wide range of content services, which (taken as a whole) are both of high quality and calculated to appeal to a wide variety of tastes and interests; and
  - (d) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment of the communications policy objectives.

**75. Appraisal of change in control.**

- (1) Where URCA, on receiving a notification made under subsection 70(4) –
  - (a) forms an opinion that the proposed change of control would not have the adverse effects set out in sections 72(a) or 72(b), URCA shall issue an adjudication giving consent to the merger; or
  - (b) forms an opinion that the proposed change would have the adverse effects set out in sections 72(a) or 72(b), URCA shall by adjudication take one of the following actions –
    - (i) declare the merger incompatible with section 73 and deny its consent;
    - (ii) give consent subject to an order that the acquirer or the licensee concerned takes the action that URCA considers necessary to eliminate or avoid any such effect; or
    - (iii) give consent without issuing an order under subsection (ii) if URCA is satisfied that any substantiated and likely efficiencies put forward by the acquirer or the licensee are necessary and outweigh any potential harm to consumers and citizens.
- (2) URCA shall, before forming any opinion or issuing any adjudication under subsection (1)–
  - (a) give the acquirer, the licensee and any interested persons a reasonable opportunity to make representations; and
  - (b) consider the representations, if any, made under subsection (1)(a).
- (3) URCA shall, by notice in writing, inform the acquirer and the licensee of –
  - (a) the adjudication made under subsection (1); and
  - (b) where an adjudication is made under subsection (1)(b)(ii), the action that URCA orders the acquirer or the licensee to take.

**76. Fees in respect of merger applications.**

URCA may by regulation require the payment of a fee in connection with the exercise of URCA's functions–

- (a) in making an adjudication and, if applicable, an order under section 75(1); and
- (b) in relation to the processing of an application made under section 70.

**77. Power to request information.**

- (1) In order to carry out the duties assigned to it under this Act, URCA may by simple request require the acquirer and the licensee to provide all necessary information.
- (2) When sending a request for information, URCA shall state the legal basis and the purpose of the request, specify what information is required, fix the time limit within which information is to be provided and state that a person that fails to provide timely information or supplying incorrect or misleading information shall be liable to pay a fine under section 110.

**78. Timetable for appraisal of changes in control.**

- (1) URCA shall promptly review a notification under section 70(3) and shall within thirty calendar days of receiving a complete notification either—
  - (a) issue its adjudication under subsection 75(1)(a) or subsection 75(1)(b)(ii) or subsection 75(1)(b)(iii); or
  - (b) inform the acquirer and relevant licensee or licensees that it is opening an in-depth investigation under subsection (2).
- (2) URCA may open an in-depth investigation where it considers that there is a significant prospect that the change of control is likely to have the adverse effects set out in sections 72(a) or 72(b) and the parties have not volunteered any proposals to eliminate URCA's concerns.
- (3) Within ninety calendar days of opening an in-depth investigation under subsection (2), URCA shall issue its adjudication under subsections 75(1)(a), subsection 75(1)(b)(ii) or subsection 75(1)(b)(iii).
- (4) The timetable in this section shall be paused if URCA requests further information from the acquirer or relevant licensee under section 77(1) and complete response is not provided to URCA within the time limit specified under section 77(2). The timetable shall re-start from the date when URCA receives a complete response to its request.

## **PART XII – TELECOMMUNICATIONS NUMBERING AND NAMING SYSTEM**

**79. Numbering plan.**

- (1) URCA shall publish a numbering plan for carriage services and may make rules pursuant to that plan for the allocation of numbers to licensees and the use and assignment of those numbers to licensees.
- (2) In preparing the numbering plan referred to in subsection (1), URCA shall  
—

- (a) comply with any applicable international numbering standards, including the North American Numbering Plan administration practices for so long as The Bahamas is a member of the North American Numbering Plan;
  - (b) ensure that there are sufficient numbers for anticipated usage;
  - (c) promote the efficient use of numbering, taking into account if technically feasible the need to ensure that number allocation is made on a non-discriminatory basis geographically amongst different islands in The Bahamas and within the islands; and
  - (d) ensure that any numbering plan takes account of number portability to the extent it is implemented under section 81.
- (3) Any rules on the allocation of numbers under the numbering plan referred to in subsection (1) shall apply on a non-discriminatory basis.
- (4) For the avoidance of doubt, URCA may prescribe such objectively justifiable rules restricting the allocation of numbers to certain licensees or types of licensees.

**80. Number portability.**

- (1) URCA shall issue a consultation and make a determination on number portability.
- (2) Licensees shall provide, to the extent technically feasible, operator to operator number portability when required to do so in accordance with the requirements prescribed by URCA so that subscribers who have been allocated a telephone number or telephone numbers may retain that number or those numbers when switching to the carriage services of an alternative licensee, provided that –
  - (a) the subscriber does not request that the carriage service is cancelled or suspended between switching suppliers; and
  - (b) using the telephone number for the carriage service provided by the new carriage service provider would not violate the numbering allocation provisions of the numbering plan.

**81. National emergency numbers.**

If so required by URCA, licensees must provide three digit numbers for emergency purposes.

**82. Management of Bahamas domain names.**

Subject to section 118 URCA shall have the exclusive power to manage, allocate and assign all domain names under the country code top level domain of The Bahamas.

## **PART XIII – TECHNICAL MATTERS**

### **83. Technical equipment.**

- (1) URCA may by determination or regulation establish –
  - (a) technical rules and standards applicable to facilities to ensure against damage to networks or carriage services or to public health, safety or the environment; and
  - (b) conditions and approval processes necessary for the manufacture within or import into The Bahamas of facilities.
- (2) No person may use or supply any facilities that do not comply with any technical rules, standards, conditions and approval processes established pursuant to subsection (1).
- (3) URCA may recognise and apply technical rules, standards, conditions and approval processes of other countries.
- (4) URCA may by determination or regulation specify the procedures for testing electronic communications systems, electronic equipment, customer premises equipment or radiocommunications apparatus to verify that such equipment complies with relevant technical standards.

## **PART XIV – LAND ACCESS**

### **84. Power to enter on public land for purposes of constructing or installing and operating electronic communications apparatus.**

- (1) For the purpose of constructing or installing and operating any facilities, the named licensee under an individual licence issued under Part IV of this Act (the “relevant licensee”), or any person authorised by it in that behalf, may, at all reasonable times, subject to the prior written approval of the Minister and the Minister responsible for public land and in accordance with regulations made under this section by the Minister to govern access to public land –
  - (a) enter upon any public land;
  - (b) erect and thereafter retain and operate on, under or over such public land such facilities as may be necessary or proper for the purpose of the named licensee’s network; and
  - (c) carry out all necessary works in connection with such construction or installation, and may, in the course of those works, fell or lop trees, remove vegetation and do all things necessary to such purposes.

- (2) When any such work interferes with improvements, buildings, growing trees or crops, the named licensee must pay compensation for disturbance or damage.
- (3) Where the land is occupied under a lease or licence for temporary occupation, such compensation shall be paid by the named licensee to the occupier under such lease or licence.

**85. Procedure for acquiring licence or consent to access land for purposes of electronic communications networks.**

Part 1 of Schedule 2 (which provides for the obtaining of a licence or consent to access land for the purposes of a network where such licence or consent cannot be obtained by agreement on reasonable commercial terms) shall have effect.

**86. Entry to land.**

- (1) Part 2 of Schedule 2, which provides rights of entry to land for specified purposes, shall have effect.
- (2) Part 3 of Schedule 2, which provides for payment of compensation under this Part, shall have effect.

**87. Notices.**

- (1) Any notice required to be served on any person for the purposes of this Part of this Act may be served personally or by registered post. In any case in which the identity or the whereabouts of the owner or occupier of or any person interested in land is unknown it shall be sufficient for a copy of such notice to be advertised in at least two newspapers having national circulation and also affixed upon the land concerned.
- (2) If the whereabouts of the owner or occupier of or any person interested in land is unknown it shall be sufficient for a copy of such notice to be posted at the nearest post office and also to be affixed upon the land concerned.

## **PART XV – NATIONAL INTEREST MATTERS**

**88. Interception.**

- (1) Each licensee shall ensure that each network that it operates has the ability to enable a private conversation to be heard, listened to or recorded using a listening device in accordance with an authorisation given under section 5 of the Listening Devices Act.

- (2) The Minister may, after consultation with the Commissioner of Police and the Attorney General, exempt a licensee from the obligation imposed under subsection (1) in so far as that obligation relates to a specified network.
- (3) Any exemption under subsection (2) shall be in writing and may be unconditional or subject to conditions specified in the exemption.
- (4) In this section, “private conversation” and “listening device” have the meaning given to them in the Listening Devices Act.

#### **89. War and emergencies.**

- (1) During any period in which Article 29 of the Constitution applies and the Governor-General considers that it is necessary in the interests of defence, public safety and public order, the Government shall have control over any and all networks or facilities and the Governor-General may take possession of and assume control over, or direct such other persons as he or she thinks fit to assume control over, part or all of the electronic communications system of any licensee or of any facilities for use by the Government.
- (2) Notwithstanding anything in this Act or any other law to the contrary, the Governor-General may, for the purpose of exercising the powers conferred on him by subsection (1), appoint temporary operative or engineering staff, for no longer than six months in the first instance, under such terms and conditions and at such salaries as the Governor-General may prescribe and determine and the salaries of all such staff shall be paid out of the Consolidated Fund.

## **PART XVI – FEES AND PAYMENTS**

#### **90. Other laws.**

The provisions of this Part shall apply without prejudice to any other fees and payments payable by licensees in The Bahamas under any other law, unless stated otherwise.

#### **91. Communications licence fee.**

- (1) URCA shall act on behalf of the Government to administer the billing and collection of the communications licence fee as set out in Schedule 3.
- (2) The communications licence fee must be paid to, and collected by, URCA on behalf of the Treasurer before the licensee commences the establishment, maintenance or operation of a network or provision of a

carriage service authorised by its licence and for each subsequent year on or before 30th April.

- (3) URCA shall account to the Treasury for all communications licence fees collected by it from licensees liable to pay communications licence fees on or before 30th June each year.
- (4) Any such charges and fees imposed under this section 91 are payable by licensees and if remain unpaid constitute a debt which may be recovered in court.

## **92. URCA fees.**

- (1) Without prejudice to financial contributions to the provision of universal service in accordance with Part VII, URCA may determine one or more of the following charges or fees –
  - (a) charges for particular services rendered by URCA in the performance of its functions or the exercise of its powers under this Act;
  - (b) fees to be payable for any application required under this Act or for the supply or making copies of documents;
  - (c) annual charges for licences to be calculated based on the licensee’s relevant turnover; and
  - (d) other fees and charges for the administration and allocation of state assets.
- (2) Any charges and fees determined and levied under this section shall –
  - (a) be set on an objective, non-discriminatory, transparent and proportionate basis;
  - (b) be published by URCA on its website (and any other form as it considers appropriate);
  - (c) seek only to cover a proportionate share of the relevant operating costs of URCA under subsection (d) for the performance of its duties under this Act. The fees for a licence shall be proportionate and be published in an appropriate and sufficiently detailed manner, so as to be readily accessible;
  - (d) be set to cover URCA’s annual budgeted costs of performing URCA’s functions and exercising its powers under this Act and the URCA Act but excluding those costs attributable to the performance of its functions under any legislation not pertaining to the regulation of the electronic communications sector; and to recover any deficit from previous years; and
  - (e) take account of any surplus in URCA’s accounts carried over from the previous accounting year.



- (3) Any such charges and fees imposed under this section 92 are payable by licensees and if remain unpaid constitute a debt which may be recovered in court.

### **93. Spectrum fees.**

- (1) The Minister may, where radio spectrum in the premium spectrum band is to be allocated or used, impose charges to be paid to the Government which reflect the need to ensure the optimal use of that spectrum, or prescribe the methods by which such charges will be set.
- (2) URCA may, where radio spectrum other than spectrum in the premium band is to be allocated or used, impose charges to be paid to the Government which reflect the need to ensure the optimal use of radio spectrum.
- (3) Any such charges and fees imposed under this section 93 are payable by licensees and if remain unpaid constitute a debt which may be recovered in court.
- (4) Charges specified in this section 93 must be paid to, and collected by, URCA on behalf of the Treasurer.

### **94. Offences and interest.**

- (1) Interest shall accrue on overdue communications licence fees or URCA fees daily at the lower of –
  - (a) a rate of four percent per annum over the prime lending rate as published by the Central Bank of The Bahamas; and
  - (b) any maximum applicable rate specified in the Rate of Interest Act.
- (2) A licensee liable to pay communications licence fees and URCA fees who–
  - (a) without lawful excuse commences or carries on an undertaking without paying the communications licence fee or URCA fee;
  - (b) in providing evidence to URCA to verify its relevant turnover and the amount due from the licensee in respect of the communications licence fee or URCA fee intentionally or recklessly makes a statement which is false in a material particular;
  - (c) obstructs URCA in the exercise of its functions under section 93(4);
  - (d) fails to submit payment to URCA in the timetable outlined in paragraph 1 of Schedule 3 and, simultaneously, proof of the aforementioned payment to URCA; or
  - (e) is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion by any person of any sum due in respect of the communications licence fee or URCA fee,

shall be guilty of an offence.

## **PART XVII – ENFORCEMENT**

### **ORDERS**

#### **95. Power to make orders.**

- (1) URCA may issue an order concurrently with a determination under section 99 or an adjudication under section 103 –
  - (a) ordering the licensee or, where such person is not a licensee, a person that contravenes any provision of this Act or a licence condition to do or to refrain from doing such things as are specified in the order to remedy, prevent or rectify the breach or anticipated breach which is the subject matter of the determination or adjudication; and, if appropriate
  - (b) imposing a fine on the licensee or, where such person is not a licensee, a person subject to the provisions of section 109, objectively justified and non-discriminatory,  
and notifying the licensee that the licence may be revoked if the licensee fails to comply with such determinations and/or to pay the fine.
- (2) Where URCA imposes an order under this section –
  - (a) the order shall be in writing;
  - (b) the order shall specify the contravention that the licensee has committed and the penalty imposed by URCA;
  - (c) a copy of the order shall be given to the licensee; and
  - (d) the order shall be applicable and in force unless suspended by the Tribunal.
- (3) An order may be enforced in the same manner as an order of the court.
- (4) If the licensee fails to comply with an order or part of an order within the time determined by URCA, URCA may –
  - (a) impose a fine or subsequent fine on the licensee; and, if appropriate
  - (b) revoke the licence with immediate effect under section 27(1)(g),  
provided that it shall have notified the licensee in the relevant order that non-compliance with the order could result in either or both of a fine or licence revocation, as appropriate.
- (5) Once the licensee satisfies the requirements of the order, the licensee shall not be liable to any further investigation by URCA in respect of the offence.

**96. Interim orders.**

- (1) In cases of urgency due to the risk of serious and irreparable damage, URCA, acting on its own initiative or at the request of any affected party, may issue an interim order.
- (2) Any interim order shall be –
  - (a) limited in time to such reasonable period of time as URCA may expect to require to complete its investigation; and
  - (b) shall only address those actions or omissions that are likely to result in serious and irreparable damage.
- (3) Any interim order should be followed by a full investigation, upon completion of which an order shall be issued by URCA that either reinforces, changes or revokes the interim order.

**97. Publication of orders.**

URCA shall publish promptly its orders on its website after taking into account any legitimate reasons of commercial confidentiality under section 14.

**98. Enforcement of orders.**

- (1) An order shall be legally binding on the parties to the order.
- (2) An order shall be legally binding unless suspended by order of the Tribunal.

## **DETERMINATIONS**

**99. Power to make determinations.**

- (1) URCA may, upon written application by any person having an interest in the subject matter of the determination, or upon its own motion if URCA has reason to believe that a determination is necessary, make determinations relating to one or more of the following–
  - (a) any obligation on a licensee relating to the terms or conditions of any licence, including obligations in licence conditions, regulations, standards or technical rules; and
  - (b) any activity set out in this Act and where the Act provides for URCA to “determine” or to “make determinations”,in accordance with section 100.
- (2) In making any determination, URCA shall have consulted persons with sufficient interest under section 11 and provide reasons in writing for its determination.

- (3) URCA shall not consider applications for a determination—
  - (a) that are vexatious or frivolous or where the applicant lacks standing;
  - (b) that do not fall within URCA’s functions under this Act or any other enactment;
  - (c) that in the view of URCA, would involve resources disproportionate to the likely benefit; or
  - (d) where URCA is of the view that issuing a determination would not be the most effective or efficient manner to resolve the subject matter of the application.
- (4) URCA must take into account the urgency of the application or the investigation commenced on its own initiative and may issue interim determinations if the application appears likely to succeed or URCA is likely to find that a licensee has breached the Act or a licence condition and irreparable harm would result if no interim determinations were made.
- (5) An interim determination under subsection (4) shall be for a specified period of time and may be renewed in so far as this is necessary and appropriate.
- (6) URCA shall consider the following factors when determining the period of time referred to in subsection (5) –
  - (a) the length of time that URCA expects would be required to complete its investigation of the application;
  - (b) the extent of irreparable harm that would be caused if no interim determination were made; and
  - (c) the burden on the licensee that would be subject to the interim determination.

**100. Procedure for determinations.**

- (1) Subject to section 99(3) if a person applies to URCA for a determination, URCA must—
  - (a) acknowledge the application within five working days of receipt;
  - (b) expeditiously request from the applicant or other parties such additional information as it reasonably requires to make a determination; and
  - (c) use all reasonable efforts to make a determination no later than four months after receiving the application.
- (2) Where URCA proposes to issue a determination under section 99(1), it shall give notice to the proposed addressee or addressees of a preliminary determination –
  - (a) specifying the determination to be made;

- (b) specifying the obligation or obligations the compliance or contravention of which are the subject of the determination;
  - (c) in accordance with section 11(3), specifying the period during which the relevant persons have an opportunity to –
    - (i) make representations about the matters in the preliminary determination;
    - (ii) comply with the obligations referred to in the preliminary determination of which they are in contravention, if applicable; and
    - (iii) remedy the consequence of contraventions notified in the preliminary determination, if applicable; and
  - (d) enclosing a draft copy of any order under section 85 that URCA would issue with the final determination, if applicable.
- (3) The period referred to in subsection (2)(c) shall be no less than one (1) month, commencing on the day after which notice of the preliminary determination was given unless the preliminary determination relates to a contravention and URCA has reasonable grounds for believing that contravention is a repeated contravention and, in those circumstances, a shorter period would be appropriate.
- (4) URCA shall consider any representations or objections that are received in connection with the preliminary determination during the period specified in subsection (2)(c).
- (5) URCA shall within one (1) month of the end of the period referred to in subsection (2)(c) issue a final determination–
- (a) referring to the matters contained in the preliminary determination;
  - (b) summarising the representations and objections received;
  - (c) containing URCA’s response to representations and objections and any further reasoning behind the determination in sufficient detail to enable it to be understood and the reasons for it to be known; and
  - (d) stating whether or not URCA intends to issue an order under section 95.
- (6) If URCA states in the final determination that it intends to issue an order under section 95, it shall issue the order at the same time as the final determination. Save in the case of repeated breaches, URCA shall not issue an order under section 95(1)(b) if in URCA’s opinion the relevant person has complied with the obligations referred to in subsection 100(2)(c)(2) and has remedied the consequences of contraventions referred to in subsection 100(2)(c)(3).

**101. Publication of determinations.**

URCA shall publish promptly its determinations on its website after taking into account legitimate reasons of commercial confidentiality under section 15.

**102. Enforcement of determinations.**

- (1) A determination shall be legally binding on the parties to the determination.
- (2) A determination shall be legally binding unless suspended by order of the Tribunal.

## **ADJUDICATIONS**

**103. Power to make adjudications.**

- (1) URCA may, acting on receipt of a complaint or notification or upon its own initiative, make adjudications relating to any contravention of Part XI in accordance with section 104.
- (2) An adjudication may impose behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the contravention to an end.
- (3) In cases of urgency due to the risk of serious and irreparable damage to competition, URCA, acting on its own initiative, may by adjudication, on the basis of a *prima facie* finding of contravention issue an interim adjudication.
- (4) An interim adjudication under subsection (3) shall be for a specified period of time and may be renewed in so far as this is necessary and appropriate.
- (5) URCA shall consider the following factors when determining the period of time referred to in subsection (4) –
  - (a) the length of time that the Regulator expects would be required to complete its investigation;
  - (b) the extent of irreparable harm that would be caused if no interim adjudication were made; and
  - (c) the burden on the licensee that would be subject to the interim adjudication.
- (6) In making any adjudication, URCA must –
  - (a) provide reasonable notice to any person who may be affected by the adjudication;
  - (b) allow any affected person an opportunity to be heard; and

- (c) provide reasons in writing for its adjudication.

**104. Procedure for adjudications.**

- (1) URCA shall establish procedures for conducting investigations under sections 67, 69 and 70 and issuing adjudications under section 103.
- (2) Prior to issuing an adjudication under section 103, URCA shall inform the parties concerned of the objections raised against them. The statement of objections shall be notified in writing to each of the parties against whom objections are raised.
- (3) URCA shall, when notifying the statement of objections to the parties concerned, set a time-limit within which these parties may inform it in writing of their views.
- (4) The period referred to in subsection (3) shall be no less than one (1) month, commencing on the day after which the statement of objections was given.
- (5) The parties may, in their written statements, set out all facts known to them which are relevant to their defence against the objections raised by URCA. They shall attach any relevant documents as proof of the facts set out.
- (6) Before issuing an adjudication under section 103, URCA may give the parties to whom it addresses the statement of objections the opportunity to develop their arguments at a public oral hearing conducted by URCA if they so request in their written submissions.
- (7) If URCA states in the final adjudication that it intends to issue an order under section 95, it shall issue the order at the same time as the final adjudication.

**105. Publication of adjudications.**

URCA shall publish promptly its adjudications on its website after taking into account legitimate reasons of commercial confidentiality under section 15.

**106. Enforcement of adjudications.**

- (1) An adjudication shall be legally binding on the parties to whom the adjudication is addressed.
- (2) An adjudication shall be legally binding unless suspended by order of the Tribunal.

## OFFENCES

### 107. Offences.

- (1) An individual found guilty of an offence under section 16 or section 33, whether on indictment or summary conviction, shall be subject to a fine not exceeding five hundred thousand dollars.
- (2) A licensee guilty of an offence under subsection 94(2) may be liable on summary conviction thereof to –
  - (a) to a fine not exceeding three hundred thousand dollars;
  - (b) in addition to any fine, a sum not exceeding ten thousand dollars for each calendar day the offence continues subsequent to the date to which the conviction relates; and
  - (c) five times the amount of any sum shown to the court that would have been payable as a communications licence fee or URCA fee but for the commission of the offence.

### 108. Maritime and Aviation.

- (1) In the event that the offence is committed in relation to a station or electronic communications equipment on board or released from a ship or aircraft, the captain or person for the time being in charge of the ship or aircraft is also guilty of the offence.
- (2) This section does not apply where the offence consists in the use by a passenger on board the ship or aircraft of receiving electronic communications equipment that is not part of the wireless telegraphy equipment, if any, of the ship or aircraft.

## FINES AND REMEDIES

### 109. Fines and remedies

- (1) Subject to subsection (3) a licensee or, where such person is not a licensee, a person that contravenes any provision of this Act or a licence condition is liable to a fine or other penalty determined by URCA, not exceeding ten percent of that licensee's relevant turnover or, where such person is not a licensee, that person's relevant turnover.
- (2) URCA may do any one or more of the following–
  - (a) issue a determination or adjudication to the persons in contravention of this Act;
  - (b) issue an order under section 95; and
  - (c) amend, suspend or revoke the licence.



- (3) Any order issued by URCA imposing a fine or other penalty shall specify the date on which that fine or penalty will become due and payable. Where the order relates to:
- (a) contravention of a licence condition; or
  - (b) contravention of the content code,
- the date so specified shall afford a reasonable period within which to remedy the relevant contravention. Except in the case of repeated contraventions, the fine or penalty shall not be payable if the relevant contravention has been remedied by the date specified in the order .
- (4) In specifying a date for the purposes of subsection (3) URCA shall have regard to:
- (a) the seriousness of the contravention and the need for urgent remedy; and
  - (b) the conduct of the person liable to pay the fine or penalty including any previous or repeated contravention of the same or any other licence condition or provision of the content code.
- (5) Any person who fails or refuses on or before the date specified for the purposes of subsection (3) to:
- (a) remedy a contravention; or
  - (b) pay a fine or penalty
- shall in respect of each failure or refusal be liable to pay an additional daily default fine not exceeding one hundredth of one percent (0.01%) of that licensee's relevant turnover or, where such person is not a licensee, that person's relevant turnover until the contravention is remedied or the fine or penalty is paid.

## **PART XVIII – THE UTILITIES APPEAL TRIBUNAL – JURISDICTION UNDER THIS ACT**

### **110. Jurisdiction of the Tribunal**

- (1) The Tribunal shall have exclusive jurisdiction to hear and determine all appeals matters and disputes referred to it and shall have such original, appellate and supervisory jurisdiction as may be conferred upon it by this Act or any other law.
- (2) The Tribunal shall have exclusive jurisdiction to issue orders in accordance with this Act or any other law.
- (3) Application for judicial review may be made to the Court in all cases where the Tribunal does not have jurisdiction under subsection (1) and (2).

## 111. Appeals

- (1) This section applies to the following—
  - (a) an adjudication by URCA under section 104 for breach of section 68 or section 70 and any orders attaching to such adjudications under section 96;
  - (b) an adjudication issued by URCA under section 76, including any order attached to such adjudication under section 96;
  - (c) a determination by URCA under section 100 and any orders attaching to such determinations under section 96;
  - (d) any decision by URCA providing for the modification or withdrawal of—
    - (i) such an adjudication;
    - (ii) such a determination;
    - (iii) an order attached to such an adjudication; or
    - (iv) an order attached to such a determination; and
  - (e) any decision of URCA or of the Minister which has an immediate effect on a person and, in particular, does not require a further act to be given effect.
- (2) This section does not apply to any act by URCA to institute, bring or carry on any criminal prosecutions under section 34 or to any preliminary steps for the purpose of enabling any such proceedings to be instituted.
- (3) A person affected by any act of URCA to which this section applies may appeal against it to the Tribunal by sending the Tribunal a notice of appeal in accordance with Tribunal rules, within the period specified in those rules.
- (4) The notice of appeal must set out —
  - (a) the section under which the enactment appealed against was taken; and
  - (b) the grounds of appeal.
- (5) The grounds of appeal must be set out in sufficient detail to indicate to what extent (if any) the appellant contends that the enactment appealed against was based on an error of fact or was wrong in law or both.
- (6) In the case of an appeal under subsections (1)(a) or (1)(d)(i) or (1)(d)(iii), the Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the Notice of Appeal;
- (7) In the case of an appeal under subsection (1)(b), the Tribunal shall decide the appeal by applying the same principles as would be applied by a court on an application for judicial review.

- (8) Except in the case of appeals referred to in subsection (6) and (7), the Tribunal shall decide the appeal by drawing any inferences that are not inconsistent with the findings of fact made by URCA and that are necessary for determining questions of law or jurisdiction.

## **PART XIX – TRANSITIONAL PROVISIONS**

### **112. Sector policy.**

The Minister shall publish the first sector policy under this Act referred to in section 6(1) in the Gazette within one (1) month of this Act coming into force or as soon as practicable thereafter.

### **113. Transitional provisions as to licences.**

- (1) Subject to subsections (3)-(6) any licence, permit or franchise granted under either the Broadcasting Act or Telecommunications Act in respect of the establishment, maintenance or operation of a network or carriage service or any use of radio spectrum, which is in force immediately prior to this Act coming into force, shall be for the purposes of Part XIX of this Act an “existing licence” and shall have effect as an individual licence granted by URCA under section 19(2) for the unexpired term of the existing licence and the provisions of Part IV shall apply to that existing licence accordingly.
- (2) Every holder of an existing licence (an “existing licensee”) shall within three months of this Act coming into force supply URCA with full details of its existing licence. Any existing licence in respect of which full details are not supplied to URCA in accordance with this subsection shall expire on the date being three months after this Act comes into force.
- (3) An existing licensee shall as soon as practicable and in any event within one month after the date on which it supplies to URCA details of an existing licence—
- (a) apply to be granted individual licences; or
  - (b) give notice of objection to URCA requesting that its existing licence continues in force for the remainder of its unexpired term or until a later date specified in the notice of objection.
- (4) If an application to be granted an individual licence is made under subsection (3)(a) URCA may—
- (a) grant an individual licence in accordance with section 26;
  - (b) refuse to grant an individual licence on the grounds that a company of which the applicant is a subsidiary undertaking is an existing

- licensee or is a company that requires or has applied for an individual operating licence;
- (c) by determination revoke the existing licence on the grounds that the activities carried out under it by the licensee fall within the scope of—
    - (i) an individual licence granted by URCA to a company of which the applicant is a subsidiary; or
    - (ii) a class licence or exemption made by URCA under section 18,such revocation to have effect on the date of that determination; or
  - (d) by determination extend the term of the existing licence for such period until the activities carried out under it by the existing licensee falls within the scope of a class licence or exemption made by URCA under section 18.
- (5) If notice of objection is received under subsection (3)(b), and if the licensee meets the requirements for the grant of an individual licence under section 26, URCA may—
- (a) permit the existing licence to continue on its current terms until its expiry date, or a later date specified by URCA;
  - (b) permit the existing licence to continue until its expiry date, or a later date specified by URCA, with such modifications revocations or additional conditions as URCA shall specify. In giving its decision, URCA shall publish a written statement explaining how that decision meets the criteria specified in sections 27(1)(a) or 27(1)(b);
  - (c) require the licensee to accept an individual licence granted in accordance with section 26; or
  - (d) by determination revoke the existing licence on the grounds that the activities carried out under it by the licensee fall within the scope of a class licence or exemption made by URCA under section 18, such revocation to have effect on the date of that determination.
- (6) If an existing licensee does not give notice of objection and does not apply to be granted an individual licence, the existing licence shall be revoked by URCA giving one month's notice to the existing licensee.
- (7) URCA shall impose on existing licensees a fee for the exercise of its functions under subsections (4), (5) and (6). This fee shall seek only to cover the administrative costs incurred in the review and modification, amendment or revocation of existing licences.

**114. The Bahamas Telecommunications Company.**

The communications policy objectives shall be subject to any special rights granted to the Bahamas Telecommunications Company in the sector policy until the earliest of the following events–

- (a) such time as the special rights in the sector policy expire;
- (b) the sector policy specifying the special rights is no longer in effect;
- (c) two years from this Act coming into force.

**115. Public service broadcaster.**

Until such time as URCA has made a designation under section 61, the designated public service broadcaster shall be the Corporation.

**116. Interim presumptions of SMP.**

- (1) Subject to subsection (9), on this Act coming into force the companies listed in Schedule 4 are presumed to have SMP in the provision of one or more of the following–
  - (a) fixed voice;
  - (b) high speed data services and connectivity;
  - (c) mobile voice and mobile data services; and
  - (d) pay TV services.
- (2) Each licensee and existing licensee listed in Schedule 5 shall in relation to each market in which it is presumed to have SMP be subject to obligations designed to maintain section 114, the objective of encouraging, promoting and enforcing sustainable competition.
- (3) Prior to imposing any obligations under subsection (2), URCA shall–
  - (a) no later than one (1) month from this Act coming into force, indicate in writing to those licensees and existing licensees listed in Schedule 4 the types of obligations that in URCA’s preliminary view would be required to satisfy the requirements in subsection (2);
  - (b) require that the relevant licensee or existing licensee submits proposed obligations to satisfy the requirements in subsection (2); and
  - (c) within three months of receipt of the obligations proposed by the relevant licensee or existing licensee, review those proposed obligations and either–
    - (i) accept the proposed obligations, or
    - (ii) object to the proposed obligations indicating the reasons for the objection and either mandate obligations that

satisfy the requirements in subsection (2) or require that the relevant licensee or existing licensee submits modified proposed obligations which shall be reviewed by URCA in accordance with subsection (c).

- (4) Any licensee that is presumed to have SMP and believes that it is compliant with the obligations imposed on it under subsection (2) may apply to URCA for confirmation on compliance with those obligations. If URCA does not confirm or deny confirmation within three months, URCA shall be presumed to have confirmed compliance under this subsection.
- (5) No licensee or existing licensee listed in Schedule 5 shall be permitted to engage in the provision of any networks or carriage services which it is not already licensed to provide when this Act comes into force until URCA has confirmed compliance under subsection (4) with any obligations imposed under subsection (2).
- (6) Without limiting any licensee's obligations under subsection (2), a licensee that is presumed to have SMP may after expiry of one year from this Act coming into force make representations with supporting evidence to URCA to rebut the presumption that it has SMP. Such representations shall address any criteria established or published under section 39(2).
- (7) URCA shall consider any representations made to it under subsection (6) and, following a review of the relevant market or markets, shall determine whether the presumption of SMP under this section has been rebutted.
- (8) As soon as possible after this Act comes into force, URCA shall exercise its powers to determine whether licensees including licensees other than existing licensees have SMP under the terms of section 39 and, if so, consider imposing conditions under the terms of section 40.
- (9) Determinations by URCA under section 39 shall supersede any decisions under this section.

#### **117. Use of spectrum for maritime or aviation purposes.**

- (1) Until such time as URCA has determined otherwise, the Bahamas Maritime Authority shall have delegated authority from URCA to issue spectrum licences to maritime vessels registered under Bahamian flag.
- (2) Until such time as URCA has determined otherwise, the Civil Aviation Department shall have delegated authority from URCA to issue spectrum licences to aircraft registered in The Bahamas.
- (3) Any existing licensee operating under a licence for maritime or aviation purposes issued by the Public Utilities Commission, the Bahamas Maritime Authority or the Civil Aviation Department at the time that this Act comes into force shall, to the extent, and for so long as, that licence is

in force, be exempt from the procedure in section 113 and shall be entitled to continue operations permitted under that licence for the duration of that licence.

**118. Domain names use.**

Until such time as URCA has determined otherwise, the College of The Bahamas shall have delegated authority from URCA to carry out the administration of domain names.

**119. Interim designation of universal service providers.**

- (1) Subject to subsection (2), on this Act coming into force the existing licensees listed in Schedule 5 shall be designated as universal service providers for the purpose of section 42(3) in respect of one or more of the following universal service obligations –
  - (a) affordable basic telephony services to all populated areas;
  - (b) affordable dial-up internet services to all populated areas;
  - (c) basic internet services to specified institutions;
  - (d) affordable public access to pay apparatus; and
  - (e) affordable basic television services in specified locations.
- (2) Determinations of universal service obligations under section 41 and designations of universal service providers under section 42(3) shall supersede any decision under this section.

## **PART XX– RELATED AMENDMENTS**

**120. Repeals enactments**

- (1) Subject to subsections (2) and (3), the enactments in Schedule 1 are hereby repealed.
- (2) Nothing in this section shall affect –
  - (a) the continuation of any civil or criminal proceedings under the legislation referred to at subsection (1); or
  - (b) any liability to pay fees or penalties under any of the legislation referred to at subsection (1) or subordinate legislation made under that Act that accrues before the date on which this section comes into operation.
- (3) Subject to section 113, any subordinate legislation or other measures that relate to subject matter within the functions or powers of the Minister or URCA under the Telecommunications Act shall continue in force, *mutatis*

*mutandis*, until such time as URCA issues regulatory or other measures for similar purposes under this Act that are inconsistent with that subordinate legislation or those other measures. Once URCA issues regulatory or other measures that are inconsistent with that subordinate legislation, or those other measures, then, to the extent of the inconsistency, the subordinate legislation or those other measures will cease to apply.



## **SCHEDULE 1**

### **REPEAL AMENDMENTS AND SAVINGS OF ENACTMENTS**

#### **1. Repeals**

The following enactments or parts of enactments shall be repealed pursuant to section 120 of the Act –

Telecommunications Act (Ch. 304) Parts I, II, III, IV, V, VI, IX, X and XI

Bahamas Telecommunications Corporation Act (Ch. 303) Section 19 and Part III (Acquisition of land)

Broadcasting Act (Ch. 305) Section 11, 18 and 21

Business Licence Act(Ch. 329) Section 7(1)(q)

## **SCHEDULE 2**

### **PART I**

#### **LAND ACCESS**

#### **PROCEDURE FOR OBTAINING A LICENCE TO ACCESS LAND OTHER THAN PUBLIC LAND**

#### **1. Interpretation.**

In this Schedule–

“**licensee**” means –

- (a) the holder of an individual licence and,
- (b) in the event that URCA exercises its power under section 9(2) to introduce general conditions of entitlement:
  - (i) every person who was the holder of an individual licence at the date on which general conditions of entitlement took effect, and
  - (ii) any person meeting the criteria for general entitlement and to whom URCA has by determination stated that this Schedule shall apply;

**“licensee’s notice”** means a notice served by a licensee under subparagraph 2(1) of paragraph 2 or subparagraph 3(1) of paragraph 3 of this Schedule;

**“occupier”** in relation to land means the person in actual possession of that land, or if there is no such person, then whoever is entitled to such possession, and in the case of land of which no person is currently in actual possession the person in whom the fee simple of that land is vested shall be deemed to be entitled to such possession; and

**“persons interested”** in land includes every person claiming an interest whether on his own behalf or as trustee for other persons beneficially interested, or as guardian of a minor or committee of a person under a legal disability, but does not include a yearly tenant or tenant by the month or at will.

**2. Access to land for the purposes of an electronic communications network where commercial terms cannot be agreed.**

(1) Subject as provided in this Schedule, whenever a licensee considers it necessary for the purposes of its network to –

- (a) construct or install on, under or over any land, other than public land, any facilities;
- (b) take such other action as may be necessary to render such construction or installation safe and efficient; and
- (c) thereafter retain on that land and operate the facilities so constructed or installed,

and any licence or consent required for those purposes cannot be obtained by agreement on reasonable commercial terms, and for a reasonable duration, the licensee may serve on each of the occupier and any other persons interested in the said land or any part of it a licensee’s notice setting out the information referred to in subparagraph (2).

(2) A licensee’s notice must include and specify –

- (a) the nature and proposed location of the facilities and of the works to be carried out on the said land;
- (b) the terms of the licence or consent required by the licensee;
- (c) the licensee’s undertaking to pay compensation in respect of any damage caused in carrying out those works together with the amount of compensation that the licensee considers appropriate and the licensee’s proposals for apportioning that sum between the occupier and any other persons interested in the said land or any part of it; and

- (d) the licensee's proposals for payment of consideration for the grant of the licence or consent specified in the licensee's notice, including
  - 
  - (i) the sum proposed to be paid;
  - (ii) whether that consideration is to be paid as a single sum or as a yearly licence or consent fee; and
  - (iii) the licensee's proposals for apportioning that consideration between the occupier and any other persons interested in the said land or any part of it.
- (3) The proposals set out in the licensee's notice shall constitute a contractual offer capable of acceptance (insofar as it relates to their respective interest) by each of the occupier and any person interested in the said land or any part of it. Acceptance of the licensee's offer by the occupier or any person interested in the said land shall, on receipt of payment from the licensee in accordance with the licensee's notice, disqualify that person from serving any counter-notice under subparagraph (4) and from seeking or receiving any further sum by way of compensation or consideration in respect of the matters specified in the licensee's notice.
- (4) Where a licensee's notice is served each of the occupier and any person interested in the said land or any part of it may (subject to subparagraph (3)) within twenty-eight calendar days after service of that licensee's notice give to the licensee a counter-notice objecting to all or any of—
  - (a) the grant to the licensee of the licence or consent specified in the licensee's notice;
  - (b) the carrying out of the works specified in the licensee's notice;
  - (c) the licensee's proposals for payment of consideration for the grant of the licence or consent; and
  - (d) the licensee's proposals for payment of compensation.
- (5) If no counter-notice is given under and within the time limit specified by subparagraph (4) the licensee shall be deemed to have been granted the licence or consent specified in the licensee's notice, and
  - (a) may enter upon the relevant land and carry out the works; and
  - (b) thereafter retain on the relevant land and operate the facilities constructed or installed in accordance with the licence or consent deemed to have been granted,provided that it has first paid to the person or persons entitled or lodged with the Tribunal to hold on behalf of the person or persons entitled a sum equal to the compensation and any consideration proposed in the licensee's notice.

- (6) Where a sum is lodged with the Tribunal in accordance with subparagraph (5) it must be accompanied by a statement –
  - (a) identifying the person or persons entitled to all or any part of that sum;
  - (b) setting out the basis on which that sum is apportioned between the persons so entitled; and
  - (c) authorising release of the appropriate sum on application by the persons so entitled, supported by sufficient evidence of identity to satisfy the Registrar of the Tribunal.
- (7) If any counter-notice is given under subparagraph (4) the licensee must before entering on the relevant land –
  - (a) cause to be lodged with the Tribunal –
    - (i) a copy of the licensee’s notice; and
    - (ii) a copy of any counter-notice given under subparagraph (4); and
  - (b) apply for an order of the Tribunal awarding to the licensee the licence or consent specified in the licensee’s notice and permitting the licensee to enter on the said land and to carry out the said works.
- (8) It shall be an offence punishable with a fine not exceeding twenty-five thousand dollars for a licensee to enter on the relevant land to take any steps or carry out any works pursuant to the licensee’s notice before the earlier of–
  - (a) withdrawal of all objections contained in any counter-notice given under subparagraph (4) by any owner or occupier of or person interested in the said land or any part of it; and
  - (b) the making of an order by the Tribunal under subparagraph (11) authorising such entry.
- (9) Upon receipt of the copy of the licensee’s notice, a copy of the counter-notice and licensee’s application provided under subparagraph (7) the Tribunal shall –
  - (a) fix a date for the hearing of the objections by any person who gave a counter-notice under subparagraph (4) having due regard to the then believed whereabouts within or without The Bahamas of any person who gave a counter-notice; and
  - (b) cause notices of such hearing accompanied by copies of the documents lodged under subparagraph (7) to be served upon all such persons or their authorised agents personally, by registered post or by substituted service as the Tribunal may deem fit.

- (10) If any objection contained in a counter-notice given under subparagraph (4) is not withdrawn before the date fixed for the hearing the Tribunal shall hold an inquiry regarding all objections to matters contained in a licensee's notice that remain outstanding, giving all parties concerned with any such objection an opportunity to be heard and the Tribunal may adjourn such inquiry from time to time as it may deem fit in the interests of the proper administration of justice.
- (11) Upon the conclusion of the said inquiry the Tribunal must by order, either unconditionally or subject to such terms, conditions or stipulations as it thinks fit, authorise or prohibit, in whole or in part, any of the matters specified in the licensee's notice.
- (12) The Tribunal may make an order under subparagraph (11) granting licence or consent and authorising the licensee to enter on the said land to carry out all or any of the works specified in the licensee's notice only if satisfied –
  - (a) that the licensee has used all reasonable endeavours to obtain by agreement on reasonable commercial terms and for a reasonable duration any licence or consent specified in the licensee's notice;
  - (b) that the works and other matters specified in the licensee's notice are in accordance with the communications policy objectives, with any regulations made by the Minister to promote or further those objectives and with any licence conditions imposed upon or affecting the licensee;
  - (c) that the works are necessary to ensure public access to networks or carriage services and are otherwise consistent with the provisions of the Constitution;
  - (d) that the grant of the licence or consent specified in the licensee's notice is capable of being adequately compensated for by money; or
  - (e) that any detriment caused to the occupier of or any persons interested in said land is outweighed by the benefit accruing to the persons whose access to networks or carriage services will be secured.
- (13) In making an order under subparagraph (11) the Tribunal may do one or more of the following –
  - (a) substitute for the proposals for payment of compensation contained in the licensee's notice a sum that the Tribunal considers to be the appropriate measure of compensation;
  - (b) substitute for the proposals for payment of consideration contained in the licensee's notice a sum that the Tribunal, assuming a willing grantor, considers to be the market value of the licence or consent awarded to the licensee and may order that sum to be apportioned

- between the occupier and any persons interested in the said land to reflect the value of their respective interests in the said land;
- (c) specify the period (being not more than fifteen years during which the licence or consent shall have effect and shall bind the occupier and all persons interested in the relevant land; and
  - (d) make such order as to costs as it thinks fit.
- (14) The judgment of the Tribunal under subparagraph (11) shall be final as to any question of fact arising in such proceedings, but any person aggrieved by the judgment of the said Tribunal may appeal to the Court of Appeal on any ground involving a point of law within such time and in such manner as may be provided by rules made under section 8 of the Court of Appeal Act.
- (15) Any order made by the Tribunal under subparagraph (11) shall be registered or recorded at the Registry of Records.

**3. Continuation or renewal of access to land where commercial terms cannot be agreed.**

- (1) Where –
- (a) a licensee’s licence or consent to retain facilities on any land, other than public land, has expired or become unenforceable against the occupier or any person interested in that land;
  - (b) the licensee considers it necessary for the purposes of its network to retain on that land and operate the facilities constructed or installed on that land; and
  - (c) any licence or consent required for those purposes cannot be obtained by agreement on reasonable commercial terms, and for a reasonable duration,
- the licensee may serve on each of the occupier and any other persons interested in the said land or any part of it a licensee’s notice including and specifying the matters required to be included in a licensee’s notice served under subparagraph 2(1) of paragraph 2 of this Schedule insofar as such matters are applicable to a continuation or renewal of the relevant licence or consent.
- (2) Where a licensee’s notice is served in accordance with subparagraph 2(1) the parties shall proceed and the Tribunal shall have the same powers as if that notice had been served under subparagraph 2(1) of paragraph 2 of this Schedule.
- (3) Any order made by the Tribunal in accordance with this paragraph for the continuation or renewal of the licensee’s licence or consent shall be registered or recorded as if that order had been made under subparagraph 2(15) of paragraph 2 of this Schedule.

## PART II

### RIGHTS TO ENTER LAND

#### 1. Power to enter on and examine land

- (1) Whenever it appears to a licensee that it is or probably will be necessary to exercise the powers conferred by this Act upon the licensee in respect of any land for the purpose of constructing or installing any facilities then after not less than seven calendar days previous notice to the occupier, if any, the licensee or any person authorised by the licensee in that behalf may do one or more of the following –
  - (a) enter upon such land,
  - (b) survey and take levels, and
  - (c) do all other acts necessary to ascertain the suitability of the land, so far as the same may be possible without causing damage or disturbance.
- (2) The licensee must pay full compensation for any damage or disturbance caused by such entry or by doing the aforesaid acts or things.

#### 2. Maintenance and repair of electronic communications apparatus

- (1) Whenever it is necessary so to do for the purpose of maintaining or repairing, replacing, adjusting or upgrading facilities forming part of a network or any part thereof, the licensee, or any person authorised by him in that behalf, may at all reasonable times do one or more of the following–
  - (a) enter upon any land on, under or over which apparatus, equipment or facilities have been laid, placed or carried, or upon which posts or other apparatus have been erected;
  - (b) carry out all necessary works of repair, maintenance, replacement or upgrading;
  - (c) in the course of those works, fell or lop trees, remove vegetation; and
  - (d) do all other things necessary to the said purposecausing as little damage or disturbance as possible and paying full compensation to the occupier and any persons interested for any damage or disturbance that may be caused thereby.

## **PART III**

### **COMPENSATION**

#### **1. Compensation payable under Part XIV of this Act**

- (1) In the absence of agreement between the parties the amount of compensation, if any, payable under the any provision of Part XIV of this Act shall be determined and awarded by the Tribunal having due regard to the principles set out in section 28 of the Acquisition of Land Act.
- (2) If any person is aggrieved by the judgement of the amount of any compensation awarded under the provisions of this paragraph, it may appeal to the Court of Appeal within such time and in such manner as may be provided by rules made under section 8 of the Court of Appeal Act.

#### **2. Payment of compensation to the owners or occupiers of or persons interested in other land affected**

- (1) When land other than the land on which electronic communications apparatus, equipment or facilities is constructed, installed and operated is damaged or injuriously affected by that construction, installation or operation the occupier or any person interested in that other land shall be entitled to fair and reasonable compensation for such damage or injurious affection
- (2) If such persons, or any of them, are unable to agree with the licensee as to the amount of such compensation the amount shall on the application of either party be assessed by the Tribunal.

#### **3. Payment of compensation etc. by licensee.**

Compensation or other moneys payable under the provisions of Part XIV of this Act shall be discharged by the licensee as soon as the amount has been agreed or otherwise finally determined under the provisions of this Act and in default of payment may be claimed and recovered in an action issued in the Tribunal or the Supreme Court.



## SCHEDULE 3

### COMMUNICATIONS LICENCE FEE

#### 1. Communications licence fee.

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

#### 2. Amendments to Schedule 3.

(1) The Minister may by order or regulation, which shall be subject to affirmative resolution of both Houses of Parliament, amend the foregoing provisions of this Schedule to provide for payment of a communications licence fee –

- (a) equal to a different percentage (which may be greater or lesser than that specified in paragraph 1) of the licensee's relevant turnover; or
- (b) subject to a minimum payment,

and in that order or regulation provide for the modification or adaptation of any provisions of this Act to such extent as may be necessary to give effect to such amendment.

(2) URCA may by regulation amend paragraph 3(3) of this Schedule to provide for a figure greater or lesser than the thresholds for requiring certification of evidence set out in that paragraph.

#### 3. Supply of information

- (1) A licensee who is liable to pay the communications licence fee and URCA fee shall supply to URCA with each payment of the fees sufficient evidence to enable URCA to verify the licensee's relevant turnover.
- (2) URCA may by notice at any time require any licensee liable to pay communications licence fees and URCA fees to supply within a specified time any particulars in writing reasonably required by URCA and being particulars relating to the administration or enforcement of this Act.
- (3) Where the relevant turnover of a licensee exceeds five hundred thousand dollars or is less than fifty thousand dollars the accuracy of any evidence provided by that licensee for the purposes of this Schedule must be certified by an accountant in possession of a practising certificate issued by the Bahamas Institute of Chartered Accountants.

## SCHEDULE 4

### PRESUMPTIONS OF SMP

For the purposes of this Act, the following existing licensees are presumed to have SMP in the provision of one or more of the following:

- (a) the Bahamas Telecommunications Company in the provision of fixed voice;
- (b) Cable Bahamas Limited in the provision of high speed data services and connectivity;
- (c) the Bahamas Telecommunications Company in the provision of mobile voice and mobile data services; and
- (d) Cable Bahamas Limited in the provision of pay TV services, and in each case, this shall include any affiliates.

## SCHEDULE 5

### INTERIM DETERMINATION OF UNIVERSAL SERVICE OBLIGATIONS AND INTERIM DESIGNATIONS OF UNIVERSAL SERVICE PROVIDERS

(1) For the purposes of this Act, the following existing licensees shall be subject to interim designations as universal service providers–

- (a) Bahamas Telecommunications Company for –
  - (i) basic dial-up internet services to all populated areas;
  - (ii) basic internet services to specified institutions;
  - (iii) basic telephony services to all populated areas; and
  - (iv) public access to pay apparatus; and
- (b) Cable Bahamas Limited for basic television services in specified locations.

(2) For the purposes of section 119 and this Schedule 5–

- (a) **“basic dial-up internet services”** shall mean the provision and use of internet connections capable of 56kbps transfer speeds;
- (b) **“basic internet services to specified institutions”** shall mean the provision of internet connections capable of 56kbps transfer speeds, free of charge, to –
  - (i) all public and church operated schools;
  - (ii) public libraries;

- (iii) public hospitals and public medical clinics;
  - (iv) senior citizens homes registered with URCA;
  - (v) orphanages registered with URCA;
  - (vi) the College of The Bahamas;
  - (vii) the Bahamas Technical and Vocational Institute;
  - (viii) the Bahamas Hotel Training College; and
  - (ix) Eugene Dupuch Law School;
- (c) **"basic telephony services"** shall mean the provision of fixed voice telephony services, including local and inter-island calls;
- (d) **"basic television services in specified locations"** means a multichannel television service comprising six channels, including ZNS Channel 13, and the Parliamentary channel to—
- (i) Sweetings Cay and Water Cay;
  - (ii) East End, Grand Bahama;
  - (iii) Grand Cay;
  - (iv) Guana Cay, Abaco
  - (v) Moores Island;
  - (vi) Central and South Andros including Mangrove Cay;
  - (vii) South Eleuthera, Current and Current Island;
  - (viii) West and East Exuma and Cays;
  - (ix) Cat Island;
  - (x) Rum Cay;
  - (xi) North and South Long Island;
  - (xii) Ragged Island;
  - (xiii) Crooked Island;
  - (xiv) Acklins Island;
  - (xv) Long Cay; and
  - (xvi) Mayaguana; and
- (e) **"public access to pay apparatus"** shall mean 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.

## **OBJECTS AND REASONS**

### **PART I**

#### **PRELIMINARY**

This Part includes the formalities required for giving the Act legal effect, the definitions (section 2) .

### **PART II**

#### **BAHAMIAN COMMUNICATIONS POLICY**

This Part sets out the objectives of the communications policy (section 5) and regulatory guidelines (section 6).

##### **Section 5.**

This provision sets out the objectives to be achieved in the communications sector. These objectives must be considered before taking any regulatory action.

##### **Section 6.**

This section sets out the key guiding principles for the exercise of power or discretion by the Government (including Ministers) and URCA. Section 6 applies to all relevant Ministers. This includes the Minister responsible for the electronic communications sector, the Minister responsible for URCA and the Minister responsible for the Broadcasting Corporation of The Bahamas.

##### **Section 7.**

The sector policy will be effective from the date that it is published in the Gazette. The first sector policy under the new regime will be published by the Minister within one month of the Act coming into force or as soon as practicable thereafter (see section 114).

### **PART III**

#### **MANAGEMENT OF ELECTRONIC COMMUNICATIONS**

This Part considers: (i) functions of URCA; (ii) powers of URCA; and (iii) Alternative Dispute Resolution.

### **Sections 8 – 9.**

Section 8 sets out the functions of URCA. Section 9 lists those regulatory or other measures that can be issued by URCA.

Section 9 also provides a mechanism by which URCA can move from a licensing regime to a general authorisation regime. Under a general authorisation regime, providers of communications services would not require a licence but would be able to operate and provide electronic communications networks or services subject to compliance with general and, if applicable, specific conditions of entitlement. Section 10.

Section 10 refers to URCA's powers of investigation. Section 10(1)(a) refers to a power to investigate "any contravention" (which may be an action or omission) and Section 10(1)(b) to the power to investigate "any alleged contravention".

### **Section 11.**

This section allows URCA to accompany a peace officer and inspect premises. A person whose premises is being inspected or a person who is in charge of that premises provide assistance in relation to the search process. .

### **Sections 12 – 15.**

To promote a stable regulatory environment that is attractive to local and international investors, it is important that URCA acts fairly and is seen to act fairly. Therefore, there is a wide obligation on URCA to publish significant documents and consult with the public.

### **Section 16.**

This section requires URCA to implement standard ADR procedures for disputes between licensees and between licensees, service providers and consumers. .

## **PART IV**

### **LICENSING OF ELECTRONIC COMMUNICATIONS**

This Part has been drafted to provide URCA with flexibility with regard to licensing. URCA will have four tools at its disposal –

- (i) An individual operating licence. This licence will allow licence holders to provide electronic communications services and networks to the public. Individual licences will be in a common form.

- (ii) An individual spectrum licence. This licence will allow licence holders to use, transmit or relay radio frequencies. .
- (iii) Class operating licences and class spectrum licences. The class licences can only be used for electronic communication services and/or networks and/or use of spectrum that fall within criteria published by URCA. s.
- (iv) Granting exemptions. URCA has the power to grant exemptions by way of determination to a class of person. If such an exemption is granted, none of the licences set out above are required in order to provide the relevant service.

## **Section 17-25.**

### **LICENCES AND EXEMPTION DETERMINATION**

These sections state that to provide a network or service without a licence is a criminal offence unless an exemption applies. The sections provide guidance to URCA on issuing licences (including the type of licence, class or individual, which is appropriate to issue) and exemptions.

#### **Section 17.**

This section sets out the principle that it is a criminal offence to operate a network, provide a service or use spectrum unless certain conditions apply. The requirement to obtain a business licence (and pay a business licence fee) is unaffected: all licensees (and exempted operators) will need to have a Business Licence Act licence in addition to any licence or exemption required under the Act. If a licensee does not have a Business Licence Act licence, that licensee will be subject to any fines or offences under the Business Licence Act. A licensee operating only under a Business Licence Act licence, having failed to obtain the necessary licence or exemption under the Act, will commit a criminal offence.

#### **Section 18.**

This section sets out those networks and services which may fall under an exemption. Networks or services that require access to land or electro-magnetic spectrum or numbers cannot be exempted.

#### **Section 19.**

This section gives URCA the power to grant exemptions by determination. This means that URCA would have to follow the process for issuing determinations,

i.e. URCA would have to carry out a consultation prior to granting an exemption.

**Section 20.**

This section distinguishes between class licences and individual licences.

**Section 22.**

Licensees may choose to offer services through certain subsidiaries. Rather than each member of a group applying separately for an individual licence, the parent company may notify URCA which of its subsidiaries will operate under the group's individual operating licence. .

**Section 23.**

Under this section, URCA may deem that certain class licences need not be registered.

**Section 24.**

This section sets out the process for issuing registrations for class licences. Class licences are automatically granted forty-five days after applying for licences unless URCA invalidates the form before that date.

**Section 26-29.**

**PROCEDURE**

These sections govern the procedures and process for application and renewal of individual licences. All persons who meet the requirements, can apply to URCA in a form specified by URCA. It is not intended that there should be a limit on the number of individual operating licences issued. Individual licences should be granted for more than 5 years unless they are temporary licences that enable licensees to test or trial new technology with spectrum.

Under section 27, applicants must be legally incorporated in The Bahamas and conduct the administration and management of their businesses from premises in The Bahamas; a physical presence is required (i.e. an office where managerial employees are based). If the licence extends to the licensee's group companies, such group companies must be registered in The Bahamas. These provisions ensure that URCA can take enforcement action against licensees that breach the law. .

Section 28 sets out the basis and process by which URCA has the power to amend and revoke licences,

Section 29 provides that URCA must keep and publish a register of all licences granted (both individual and class licences).

## **PART V**

### **SPECTRUM MANAGEMENT**

This Part allows URCA to manage, allocate and assign all frequencies in the radio spectrum of The Bahamas unless the powers vested in the Minister by section 31 apply. URCA is to have regard to its obligations and objectives contained in this section when managing, allocating or assigning radio spectrum.

#### **Section 30**

This section gives URCA's the power to manage, allocate and assign spectrum (subject to section 31).

#### **Section 31**

This section sets out the responsibilities of the Minister in relation to the allocation of spectrum, which include the determination of the method of allocation of spectrum in a particular band. Where the Minister determines the method for allocating scarce spectrum in the premium band, he or she may also set the charges or method of calculating the charges for allocating the spectrum. These charges would be collected by URCA, who would be accountable to the Minister (section 94).

#### **Section 32:**

This section governs the establishment of the national spectrum plan, which URCA must publish subject to approval by the Minister. If the Minister does not give his or her approval or introduces amendments within forty-five days, URCA can publish the spectrum plan (i.e. silence is considered to be tacit approval). The plan must be revised within three years of each publication.

#### **Sections 33-34**

These sections set out the obligations of URCA in relation to management of radio spectrum. URCA must ensure, among other things, that radio spectrum is managed and used in a fair and transparent manner consistent with international regulations and standards whilst also promoting efficiency. URCA must also take immediate action in order to protect licensed spectrum bands from interference. Under section 34, such interference may be considered a criminal offence.



### **Section 35**

This section allows for URCA to establish a committee in order to consider the allocation and assignment of radio spectrum for use by government bodies.

### **Section 36**

This section sets out further powers URCA's has in relation to the management of spectrum such as establishing classes of radio spectrum, establishing procedures, conditions and restrictions applicable to the use of radio spectrum and equipment etc.

### **Sections 37-38**

These sections set out the process by which URCA can declare radio spectrum vacant and assign that spectrum to a different person, either with compensation or without compensation being paid. Where the vacation does not fall under one of the grounds stipulated in section 37, the affected person may have the benefit under section 38 of compensation from the new spectrum licensee.

### **Section 39:**

This section prevents licensees from assigning spectrum to third parties until such time as a system is put into place and finalised.

## **PART VI**

### **SMP LICENCES**

URCA will have the power under Part VI to take ex post (after the event) action against licensees that enter into anticompetitive arrangements or abuse a dominant position. However, as a regulator, URCA must also have the power to take ex ante (before the event) measures in order to promote competition and achieve the objectives in section 5. SMP provisions are designed to give URCA such powers.

Part VI gives URCA the power to determine that certain licensees have significant market power ("SMP") in specified markets and to impose certain obligations on those licensees with SMP. Regulation imposed after an SMP determination on so-called "SMP licensees" is therefore different and needs to be distinguished from enforcement action against dominant licensees who abuse their dominance.

**Section 40:**

This section sets how URCA shall determine whether a licensee has SMP. It has been drafted to guide URCA as to the relevant factors for determining SMP without obliging URCA to follow an overly detailed procedure.

**Section 41**

This section sets out a non-exclusive list of the obligations which are imposed on licensees deemed to have SMP. For example, URCA can oblige the licensee that has SMP to offer access or interconnection to other service providers at rates approved by URCA and published in a reference offer, and/or the licensee to submit its retail tariffs to URCA for approval.

**PART VII**

**UNIVERSAL SERVICE**

This Part sets out a mechanism for the Minister to specify the services which the Government requires a designated licensee to provide to persons in The Bahamas or in certain locations within The Bahamas. These services are known as “universal services”.

**Section 42.**

This section allows for the universal service obligations (“USO”) to be specified in the Sector Policy or to be otherwise published by the Minister in the Gazette. The initial USOs are set out in section 120 and Schedule 6.

**Section 43.**

This section allows the Minister to determine that a licensee or licensees shall be the universal service provider/s. Schedule 6 sets out which operators shall be deemed universal service providers at the date of commencement of the Act.

**Sections 44-45.**

These sections allow URCA to set up a universal service fund or funds. A licensee who is designated as a universal service provider can apply to URCA to receive a benefit in the form of funding from a Universal Service Fund or such other means as may be determined by URCA. The Universal Service Fund shall only apply to the universal services URCA may determine, and the fund shall only be spent on the installation and maintenance of networks and the provision of new services in an area where the cost of providing services prevents the provision of universal services on a commercial basis. Under section 45, URCA has the power to enforce charges against licensees for universal services.

## **PART VIII**

### **CONSUMER PROTECTION**

This Part sets out provisions to offer protection to electronic communication sector consumers.

Licensees will have to comply with existing consumer protection legislation in addition to the provisions contained in this Part. URCA should have regard to existing legislation so as to ensure consistency when issuing any regulations pursuant to the Act.

#### **Section 46.**

This section imposes a duty on URCA to monitor and enforce the consumer protection provisions in the licences. The section also provides URCA with the power to issue regulations over and above the consumer protection afforded by the conditions in the licences.

#### **Section 47.**

This section ensures that indicators of licensees' compliance with consumer protection requirements can be published.

#### **Section 48-52.**

These sections provide further protection for consumers including provisions to maintain confidentiality of user information (to protect the personal data of consumers – these provisions are consistent with the Data Protection (Privacy of Personal Information) Act 2003), confidentiality of communications and govern the rights of the licensee access to consumers premises where the licensees' equipment is located.

## **PART IX**

### **CONTENT REGULATION**

This Part provides for URCA to put in place a code of practice or codes of practice relating to the content intended for reception in The Bahamas or broadcast in The Bahamas. Any persons providing contents to The Bahamas must abide by this code of practice or will be liable to pay a fine (not exceeding 10% of its relevant turnover).

### **Section 53**

At commencement of the Act, URCA's regulatory responsibility in relation to content services will be limited to the regulation of audiovisual media services.. Section 53 does, however, allow URCA's remit to be extended to all content services, should this be appropriate.

### **Section 54**

This section provides general guidance on what should be included or focused on in a code of practice for audiovisual media services and deliberately avoids being overly prescriptive in its approach.

### **Section 56**

URCA may delegate its power to develop a code of practice. Industry groups can develop the codes of practice applicable to content providers in their relevant section of industry. Codes of practice developed by industry groups will only have effect when registered by URCA and it will be URCA who enforces and applies the code of practice.

### **Section 58**

URCA may issue regulations requiring licensees to retain recordings of transmissions. This section grants to URCA the powers to ensure that licensees are complying with URCA's standards in relation to content.

### **Section 59**

The penalty for non compliance with a content code shall be a fine to be imposed under the procedure in section 106(3).

## **PART X – PUBLIC SERVICE BROADCAST**

URCA will conduct a review, as soon as possible after this Act has come into force, of the public sector broadcast needs of the public in The Bahamas;After such a review, URCA will publish a report in relation to the role of public service broadcasting in The Bahamas.

### **Section 60**

URCA should review public sector broadcasting and issue recommendations to the Minister.

Subsections (2) and (3) establish the procedure for the Minister to specify the public service obligations that will be provided by the broadcaster selected pursuant to section 62.

### **Section 62**

This section sets out the circumstances under which URCA can designate a public service broadcaster.

### **Sections 63-65**

These sections govern the financial aspects relating to the public service provider. Section 64 establishes a fund (public service broadcasting fund) from which the public service broadcaster is entitled to receive money.

## **PART XI – COMPETITION PROVISIONS**

### **Section 67**

Section 67 introduces certain principles for the interpretation of the competition provisions in Part XI by referring URCA to international best practice.

## **ANTI-COMPETITIVE AGREEMENTS**

### **Section 68-69**

These sections prohibit agreements, decisions and practices implemented (or intended to be implemented) in The Bahamas which prevent, restrict or distort competition relating to communications and which may affect trade within The Bahamas.

## **ABUSE OF A DOMINANT POSITION**

### **Section 70**

These sections provide that any conduct on the part of one or more licensees, which amounts to an abuse of that licensee's dominant position in a market within The Bahamas, is prohibited if it may affect trade within The Bahamas.

## **MERGER CONTROL**

### **Section 71-79**

No change in control of a licensee can be implemented without obtaining the prior written approval of URCA. If the parties fail to notify URCA of a relevant merger, then URCA may order that the parties de-merge. These sections set out the process and manner in which the licensee must notify URCA and the manner in which URCA should deal with such notice.

## **PART XII – TELECOMMUNICATION NUMBERING AND NAMING SYSTEM**

This Part obliges URCA to publish a numbering plan for carriage services and allows URCA to make rules pursuant to that plan for the allocation of numbers to licensees and the use and assignment of those numbers to licensees.

Under section 83, URCA shall have the power to manage “.bs” domain names in The Bahamas.

## **PART XIII – TECHNICAL MATTERS**

This Part allows URCA, by determination or regulation, to establish technical rules and standards which are to be applicable to communications equipment manufacture within or import into The Bahamas.

## **PART XIV – LAND ACCESS**

This Part provides for licensees to gain access to land and facilities for the purposes of providing and developing electronic communications networks and services. It distinguishes between:

- licensees’ rights over public land, and
- the procedure available, as a last resort, to obtain a licence or consent to place electronic communications apparatus, equipment and facilities on land other than public land.

The provisions relating to public land permit licensees to obtain access to and use of public land including roads and streets. The right is to locate electronic communications apparatus, equipment and facilities on, over or under such land.

### **Section 87**

This section refers to Part II of Schedule 2 which regulates access to land for initial surveys to assess suitability for electronic communications purposes and also for maintenance and repair of existing apparatus, equipment and facilities.

### **Section 88**

This section regulates the service of notices for the purposes of this Part of the Act.

## **PART XV – NATIONAL INTEREST MATTERS**

This Part sets out the Minister's powers in matters of national interest. These provisions are based on the Minister's powers in the current Telecommunications Act 1999.

**Section 89:**

This section ensures that the Act is compatible with the requirements of the Listening Devices Act.

**Section 90**

This section enables the Governor General to take possession of any electronic communications network in the cases of national emergency.

**PART XVI – FEES AND PAYMENTS**

This Part sets out the various fees that will be payable by licensees under the Act. The fees include a Licence Fee, an URCA Fee and Minister Fees.

**Section 92:**

This section establishes the mechanism for the payment of an annual communications licence fee. URCA shall collect this fee on behalf of the Government. At the date of commencement of the Act, the communications licence fee will be equal to 2% of the licensee's relevant turnover. The amount of the fee and the mechanism for changing the amount of the fee is set out in Schedule 3.

**Section 93**

This section governs the collection of the URCA Fees by URCA. URCA is given powers to set the URCA Fee in accordance with the provisions of this section and charge interest on late payments. Interest is set at 4% per annum over the lending rate of CBB.

**Section 94**

When allocating scarce resources, such as spectrum, it may be appropriate to impose a charge to ensure that the resource is allocated in the optimum manner. This charge will be collected by URCA on behalf of the Government.

**Section 96**

The recipient of an order may appeal to the Utilities Appeal Tribunal to review the order. The Utilities Appeal Tribunal may take interim measures, such as suspending the order under section 12 of the Utilities Appeal Tribunal Act.

## **PART XVII – ENFORCEMENT**

### **ORDERS**

#### **Sections 96-99**

These sections provide URCA with the power to make Orders. Orders relate to the sanctions which URCA may impose on licensees and content providers for a breach of legislation. Orders will be issued by URCA in conjunction with its decisions and determinations. Orders may contain sanctions such as fines not exceeding 10% of the licensee's relevant turnover, specific performance, injunctions or, the variation, suspension or revocation of licences. In the case of emergency, URCA may make an interim order.

### **DETERMINATIONS**

#### **Sections 100-103**

These sections give power to URCA to make Determinations. Determinations relate to the regulatory functions of URCA. URCA may investigate an alleged infringement either as the result of a third party complaint or on its own initiative.

### **ADJUDICATIONS**

#### **Section 104-107**

These sections give power to URCA to make Adjudications. Adjudications relate to the competition functions of URCA. These are used where a licensee has acted anticompetitively (whether in conjunction with other undertakings or through abusing its dominant position) or is subject to a change of control. URCA may investigate an alleged infringement either as the result of a third party complaint or on its own initiative.

### **CRIMINAL OFFENCES**

#### **Sections 108-109**

If a person is not licensed and breaches any provision of the Act, URCA's recourse is through the criminal courts. Under the URCA Act, URCA would have the power to bring the prosecutions.



## **FINES AND REMEDIES**

### **Section 110**

The general fine that can be imposed on a licensee for contravention of this Act is a fine not exceeding 10% of their relevant turnover. The fine may be required to be paid in one lump sum, or over a period of time in smaller sums.

## **PART XVIII**

### **THE UTILITIES APPEAL TRIBUNAL**

#### **JURISDICTION UNDER THIS ACT**

### **Section 111**

This Part sets out the jurisdiction of the Utilities Appeal Tribunal under this Act. The Act affirmatively confers upon the Tribunal jurisdiction to hear and judicially review appeals from URCA, disputes between licensees and any other matters or disputes referred to the Tribunal by this Act or any other law. The Tribunal's jurisdiction includes hearing and determining disputes over land access. For the avoidance of doubt, whenever the Tribunal's jurisdiction does not extend to the review of regulatory or other measures of URCA or any public authority, normal principles of judicial review apply, as administered by the courts of The Bahamas.

## **PART XIX**

### **TRANSITIONAL PROVISIONS**

This Part governs licences granted under legislation repealed by this Act or the URCA Act and in force on the date that this Act comes into effect. Most of these provisions are described above in the context to which they relate.

### **Section 114**

This section sets out the process for migrating licensees under the Telecommunications Act and the Broadcasting Act to licences under the new communications regime established by the Communications Act.

### **Section 115**

Under the current sector policy, BTC has a monopoly for the provision of cellular services. It is envisaged that BTC will continue to have a monopoly for the provision of cellular services until the special rights in the sector policy expires or the sector policy is no longer in effect.

### **Section 119:**

This section states that the College of The Bahamas will continue to administer domain names, unless URCA decides otherwise.

## **PART XX**

### **RELATED AMENDMENTS**

### **Section 121**

This section repeals legislation listed in Schedule 1 relating to the electronic communications sector which the Act replaces.

## **SCHEDULE 1**

### **REPEAL AND SAVINGS OF ENACTMENT**

List of Acts partially repealed and replaced by this Act and the URCA Act Telecommunications Act (*Ch. 304*), Broadcasting Act, (*Ch. 305*), Bahamas Telecommunications Corporation Act (*Ch. 303*); and the Business Licence Act (*Ch 329*), are partially repealed by this Act.

## **SCHEDULE 2**

### **LAND RIGHTS**

This Schedule provides licensees with a 'last resort' procedure for obtaining licence or consent access land, other than public land, where access is necessary for the purposes of the licensee's network and cannot be obtained on reasonable commercial terms, and for a reasonable duration.

### **SCHEDULE 3**

#### **COMMUNICATIONS LICENCE FEE**

This Schedule sets out the amount of the Communications Licence Fee and the process for amending the fee.

### **SCHEDULE 4**

#### **PRESUMPTIONS OF SMP**

This section lists the existing licensees who are presumed to have SMP in the provision of various services.

### **SCHEDULE 5**

#### **INTERIM DETERMINATION OF UNIVERSAL SERVICE OBLIGATIONS AND INTERIM DESIGNATIONS OF UNIVERSAL SERVICE PROVIDERS**

This section lists the existing licensees who shall have universal service obligations at commencement of the Act.