

L.N. 216 of 1998

**TELECOMMUNICATIONS (REGULATION) ACT, 1997
(ACT NO. XXXIII OF 1997)**

**Telecommunications (Universal Service Obligations) Regulations,
1998**

IN exercise of the powers conferred by section 33 of the Telecommunications (Regulation) Act 1997, the Prime Minister, on the recommendation of the Telecommunications Regulator, has made the following regulations:

1. These regulations may be cited as the Telecommunications (Universal Service Obligations) Regulations, 1998. Citation.

2. (1) Unless otherwise provided in these regulations or unless the context otherwise requires, all words used in these regulations shall have the same meanings assigned to them in the Telecommunications (Regulation) Act, 1997, hereinafter referred to as "the Act". Interpretation.

(3) The following words shall have the meanings assigned to them hereunder:

"Basic Services" means telecommunications services which, in the absence of an obligation to provide such services, would not be provided due to geographical or environmental conditions adverse to the installation of a telecommunications infrastructure;

"Designated Authorised Provider" means Maltacom p.l.c., Vodafone (Malta) Ltd. and such other authorised provider as the Regulator may designate from time to time, such designation to be published in the Gazette;

"Designated Universal Services" means the services set out in paragraph (1) of regulation 4 of these regulations;

"Emergency Organisations" means the providers of the ambulance service, the police and the fire service and, in the case of Remote Care Services, includes the providers of specially constituted care or medical services dedicated to the provision of supervisory or other care to elderly or otherwise vulnerable or disadvantaged Subscribers;

"Emergency Services" means telecommunications services which enable a Subscriber to obtain an immediate connection to the Emergency Organisations by dialling the following numbers:

“191”, “196” and “199” or such other numbers as the Regulator may, in consultation with the Designated Authorised Provider, determine from time to time;

“Fault Reporting Service” means a telecommunications service which enables a Subscriber automatically to report a fault in relation to the telecommunications services being provided by dialling the number “133” or such other numbers as the Regulator may, in consultation with the Designated Authorised Provider, determine from time to time;

“Fund” means the Universal Services Fund established in terms of regulation 7 of these regulations;

“Maritime Communications Services” means the telecommunications services and the apparatus necessary to enable telecommunications between ships and those maritime coastal stations established by Malta from time to time;

“Operator Assisted Services” means telecommunications services the provision of which or connection to which is obtained by first dialling an operator using the following numbers: “190” and “194” or such other numbers as the Regulator may, in consultation with the Designated Authorised Provider, determine from time to time;

“Remote Care Services” means telecommunications services provided by a Designated Authorised Provider to those Subscribers who are elderly or otherwise vulnerable or disadvantaged, which are established so as to provide continuous access to Emergency Services;

“Subscriber” means any person to whom a Designated Authorised Provider provides telecommunications services;

“Voice Telephony Services” means the transmission, sending and receiving of spoken messages in real time.

Authorisation
of Regulator.

3. The Telecommunications Regulator is hereby authorised in terms of the provisions of subsection (3) of section 33 of the Act to designate the services which are to be provided as Universal Service Obligations, and to require any one or more authorised providers to provide such services.

Designation of
Universal Service
Obligations.

4. (1) By virtue of the authority vested in him in terms of regulation 3 above, the Regulator has designated the following services as Universal Service Obligations:—

- (a) Basic Services;
- (b) Remote Care Services;
- (c) Operator-Assisted Services;
- (d) Fault Reporting Services;
- (e) Emergency Services;
- (f) Maritime Communications Services.

(2) Emergency Services shall be provided free of charge to Subscribers.

5. (1) A Designated Authorised Provider shall within a reasonable time provide to every person in Malta who requests the provision thereof, the Designated Universal Services by means of the public telecommunications infrastructure installed and operated by such Designated Authorised Provider, except to the extent that the Regulator is satisfied that any reasonable demand is, or is to be, met by other means and that accordingly it would not be reasonable in the circumstances to require the Designated Authorised Provider to provide the services requested.

Provision of
Universal Services.

(2) A Designated Authorised Provider shall ensure that the public telecommunications infrastructure operated by that provider is installed, kept installed and run for the provision of the Designated Universal Services.

6. (1) The obligation to provide any Designated Universal Service shall not apply:

Exceptions and
Limitations.

- (a) where there is no demand for it;
- (b) where provision of the service requested would expose any person engaged in its provision to undue risk to health and safety;
- (c) where the Designated Authorised Provider is unable to obtain (either because it has not been developed or for some other reason beyond such provider's control) anything necessary to provide a service of the quality or standard required by the person who requests the provision of the service and, in the event of dispute, the Regulator's decision as to whether anything is necessary shall be final, subject to any right of appeal granted by or under the Act;

(d) where the person to whom a Designated Authorised Provider would otherwise be under the obligation to provide any service, requests a service at a place in which the apparatus necessary to provide that service in that area has not been installed (or in which the installation of such apparatus has not been completed) or as the case may be such apparatus has not been adopted or modified to make it capable of providing the service of the kind requested, provided that the Designated Authorised Provider can prove the existence of these circumstances. In the event of dispute the Regulator's decision shall be final subject to any right of appeal granted by or under the Act;

(e) where in the opinion of the Regulator it is not reasonably practicable in all circumstances for the Designated Authorised Provider to provide the services requested at the time or place demanded.

(2) A Designated Authorised Provider shall not be obliged to supply, connect, or keep connected to any of its telecommunications infrastructure, or to permit to be so connected or kept connected any telecommunications infrastructure or apparatus, or to provide telecommunications services, if the person to or for whom that is, or is to be, done:

(a) has not entered or will not enter into a contract for the purpose with the Designated Authorised Provider for reasons other than the Designated Authorised Provider's unreasonable refusal; or

(b) is, or in the Regulator's opinion has given reasonable cause to believe that he may become:

(i) in breach of a contract with the Designated Authorised Provider for the provision of telecommunications services or for the supply of telecommunications apparatus or a telecommunications system supplied by the Designated Authorised Provider; or

(ii) in default in regard to any debt or liability owed to the Designated Authorised Provider in respect of such contract; or

(c) is using, or permitting the use of apparatus so supplied for any illegal purpose or has done so in the past and is likely to do so again; or

(d) has obtained, or attempted to obtain, any telecommunications apparatus or telecommunications service from the Designated Authorised Provider by corrupt, dishonest or illegal means at any time.

7. (1) The Regulator has established the funding mechanisms hereinafter set forth to ensure that the burdens resulting from the obligations imposed by these regulations are shared as set out in these regulations.

Establishment of the Universal Services Fund.

(2) There shall be established a fund to be styled as the Universal Services Fund for the payment to a Designated Authorised Provider of such amounts as represent the cost to such Designated Authorised Provider of providing the Designated Universal Services for each year, hereinafter referred to as "the Fund".

8. The Fund shall be administered by the Regulator, who shall be required to publish annual accounts specifying the amounts paid into the Fund and the amounts paid out to Designated Authorised Providers from the Fund. The Fund shall be held in an interest bearing account with a bank licensed under the Banking Act, 1994.

Administration of the Fund.

Act XV of 1994.

9. (1) The authorised providers who are required to contribute to the Fund are those authorised providers who are permitted by the terms of their authorisation to provide to the public Voice Telephony Services by whatever technical means.

Contributors to the Fund.

(2) Designated Authorised Providers shall be required to contribute to the Fund in accordance with these regulations.

10. (1) The authorised providers who are required by regulation 9 above to contribute to the Fund, shall contribute each year an amount calculated on the gross revenues received in the previous year from the provision of Voice Telephony Services by each such provider expressed as a percentage of the gross revenues received by all authorised providers for the provision of Voice Telephony Services for the previous year, which percentage shall be multiplied by the cost to the Designated Authorised Provider or Providers of providing the Designated Universal Services as calculated in accordance with these regulations.

Contributions to the Fund.

(2) Costs for the provision of the Designated Universal Services shall be calculated on the basis of the method indicated in the Schedule to these regulations.

11. The authorised providers who are required by regulation 9 above to contribute to the Fund, shall ensure that all necessary information and documentation is disclosed to the Regulator such that he may verify that the contribution represents the amount calculated for each such authorised provider in accordance with regulation 10.

Disclosure by contributors to the Regulator.

12. Contributions shall be received by the Regulator by not later than the 31st December of each year

Date for contributions.

Notification of
estimated costs by
contributors.

13. (1) The Designated Authorised Provider shall notify the Regulator by the first September of each year of the estimated costs for the provision of the Designated Universal Services for the subsequent year and shall provide such information and documentation as will enable the Regulator to determine whether the costs specified by such Designated Authorised Provider are, or appear to be, justified.

(2) Where the Regulator does not consider that the estimated costs specified by the Designated Authorised Provider are justified, the Regulator shall, within thirty days from receipt of the said information and documentation, notify the Designated Authorised Provider in writing, setting out the reasons for his view and stating what further information the Designated Authorised Provider is required to provide in order to justify the costs.

(3) The Designated Authorised Provider shall have thirty days to provide the information and documentation requested by the Regulator under paragraph (2) of this regulation.

(4) Where the Regulator considers that, notwithstanding such further justification as may have been provided, the costs cannot be justified, he shall notify the Designated Authorised Provider of his decision within thirty days from the date of receipt of any further information or documentation requested under this regulation.

(5) Both the Regulator and the Designated Authorised Provider may, without prejudice to the application of provisions of paragraph (7) of this regulation, refer the matter to the Telecommunications Appeals Board, in the case of the Regulator within thirty days from the date of his final decision that the estimated costs specified by the Designated Authorised Provider are not justified, and, in the case of the Designated Authorised Provider within thirty days from notification to him of the said decision of the Regulator.

(6) The Telecommunications Appeals Board shall decide the matter within ninety days from the date of the referral. Subject to section 32 of the Act, the decision of the Telecommunications Appeals Board shall be final.

(7) The Regulator shall by the first December of each year notify all Designated Authorised Providers of the amount of the contribution to be made by each of them in respect of the provision of the Designated Universal Services and the said amounts shall be paid within the period stipulated in regulation 12 notwithstanding and without prejudice to any contestation regarding the same.

(8) The procedures and deadlines for contributions to the Fund in respect of the year 1999 shall be those as may be published by the Regulator in the Gazette.

14. The amount which a Designated Authorised Provider shall be required to pay into the Fund shall be the amount due to the Fund in accordance with regulation 10 of these regulations less the costs of provision of the Designated Universal Services by the Designated Authorised Provider.

Set-off of contributions.

15. The Regulator shall take all necessary measures to collect all money due to the Fund by the 31st December of each year and shall ensure that by that date, the amount representing the estimated cost to the Designated Authorised Provider of providing the Designated Universal Services for the subsequent year, less the amount of the Designated Authorised Provider's contribution, is paid to Designated Authorised Provider:

Date for payment by Regulator from the Fund.

Provided that nothing in this regulation shall be interpreted as obliging the Regulator to make any payment in excess of the amount received by the Fund.

16. The Designated Authorised Provider shall submit such accounting and other information to the Regulator by the first September of each year as will enable the Regulator to verify that the estimated costs calculated in accordance with regulation 13 actually represent the costs incurred by the Designated Authorised Provider in the provision of Designated Universal Services during the course of the year.

Comparison of actual and estimated costs.

17. Where the costs actually incurred by the Designated Authorised Provider are greater than the estimated costs calculated in accordance with regulation 13, the Regulator shall ensure that the difference in favour of the Designated Authorised Provider is paid to the Designated Authorised Provider when payment out of the Fund is made for the subsequent year in accordance with regulation 13.

Where costs incurred are greater than estimated costs.

18. (1) Where the costs incurred by the Designated Authorised Provider are less than the estimated costs calculated in accordance with regulation 13, the Regulator may require the Designated Authorised Provider to take this into account in notifying to the Regulator its estimated costs for the provision of the Designated Universal Services in the subsequent year in accordance with regulation 13.

Where costs incurred are less than estimated costs.

(2) If the Designated Authorised Provider does not pay the difference to the Fund or does not take it into account in its estimated costs, the Regulator shall take this into account in considering whether the estimated costs for the subsequent year notified to it by the Designated Authorised Provider are justified.

19. The Designated Authorised Provider shall be required to account separately for the amounts received from the Fund.

Receipts from Fund to be accounted for separately.

SCHEDULE

Regulation 10(2)

**METHOD OF CALCULATION OF COST FOR DESIGNATED
UNIVERSAL SERVICES FOR VOICE TELEPHONY**

1. The calculation of costs for Designated Universal Services shall be based on the actual cost of providing the said services and shall be calculated as the difference between the net cost for the Designated Authorised Provider of operating with the Universal Service Obligations and the net cost of operating without the said obligations.

2. The said calculation shall be based upon the cost attributable to elements of the Designated Universal Services which can only be provided at a loss or under cost conditions falling outside normal commercial standards and which an operator applying the normal commercial principles of a competitive environment would chose not to provide.

3. Revenues from the Designated Universal Services shall be taken into account in calculating the net cost.