

COMMUNICATIONS (UNIVERSAL SERVICE AND USERS' RIGHTS) REGULATIONS 2006

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**Subsidiary
2006/072**

Regulations made under ss. 9 and 33 (2).

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(LN. 2006/072)

5.6.2006

Amending enactments	Relevant current provisions	Commencement date
LN. 2011/072	rr. 2, 3, 4(3) & (4), 5, 6, 7(7A), (7B) & (7C), 8(1) (2)(a), 10, 13, 14, 15, 16, 17(1), (2), (3), (4) & (4A), 18, 18A, 19, 19A, 20(2), 21, 22, 23(2)(b), (3) & (4), 23A, 24, 25(1) & (6), 26,27(1A) & (7), 28(1)(b) & (3), 29(7), 30(3) & (4), Schs, 1, 3, 4 & 5	26.5.2011

EU Legislation/International Agreements involved:

Directive 92/44/EC

Directive 2002/22/EC

Directive 2002/58/EC

Directive 2009/136/EC

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In exercise of the powers conferred on me by sections 9 and 33 (2) of the Communications Act 2006 and of all other enabling powers and in order to transpose into the law of Gibraltar Directive No. 2002/22/EC of the European Parliament and of the Council of 7 March 2002, on universal service and users' rights relating to electronic communications networks and services, I hereby make the following Regulations.

Title.

1. These Regulations may be cited as the Communications (Universal Service and Users' Rights) Regulations 2006.

Interpretation.

2. In these Regulations, except where the context otherwise requires—

“Access Regulations” means the Communications (Access) Regulations 2006;

“Authorisation Regulations” means the Communications (Authorisation and Licensing) Regulations 2006;

“designated universal service provider” means a person designated under regulation 7;

“geographic number” means a telephone number from a range of numbers in the Gibraltar Numbering Plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point of the subscriber to whom the telephone number has been assigned;

“non-geographic number” means a telephone number from the Gibraltar Numbering Plan that is not a geographic number and includes a mobile, free phone and premium rate number.

“the Act” means the Communications Act 2006;

“universal service obligation” means an obligation imposed on a universal service provider pursuant to regulation 3, 4, 5, 6 or 8 (2).

PART I : UNIVERSAL SERVICE OBLIGATIONS

Provision of access at a fixed location and provision of telephone services.

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3.(1) A designated universal service provider shall satisfy all reasonable requests for connection at a fixed location to a public electronic communications network.

(2) A connection provided by a designated universal service provider in accordance with sub-regulation (1) shall, taking into account prevailing technologies used by the majority of subscribers and to technological feasibility, be capable of supporting–

- (a) voice communications;
- (b) facsimile communications; and
- (c) data communications,

at data rates that are sufficient to permit functional Internet access.

(3) A designated universal service provider shall satisfy all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in sub-regulation (1) that allows for originating and receiving domestic calls.

(4) Where a designated universal service provider denies any reasonable request made under sub-regulations (1) or (3) he shall inform the person making the request of his right to submit a complaint and pursue the dispute resolution procedures referred to in regulation 29.

(5) For the purposes of the services referred to in this regulation, the Authority may specify requirements to be complied with by a designated universal service provider in relation to–

- (a) functional Internet access, having regard to prevailing technologies used by the majority of subscribers and to technological feasibility;
- (b) the terms and conditions upon which the connection referred to in sub-regulation (1) shall be provided;
- (c) the reasonableness of requests for the connection referred to in sub-regulations (1) and (3); and
- (d) the provision of operator assistance for the purpose of handling calls to the emergency services using the single European

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emergency call number “112” or any emergency call number in Gibraltar that may be specified by the Authority.

Directory enquiry services and directories.

- 4.(1) A designated universal service provider shall ensure that—
- (a) a comprehensive directory is made available to all end-users; and
 - (b) a comprehensive telephone directory enquiry service is made available to all end-users, including users of public pay telephones.
- (2) The directory referred to in sub-regulation (1) (a) shall be—
- (a) printed or electronic or both;
 - (b) in a form approved by the Authority; and
 - (c) updated on a regular basis, and at least once a year.
- (3) A directory or directory enquiry service referred to in sub-regulation (1) shall, subject to regulation 20 of the Privacy Regulations—
- (a) comprise all subscribers of publicly available telephone services in Gibraltar, including those with fixed, mobile and personal numbers, who have not refused to be included in such directories; and
 - (b) include the name, address and telephone number of all subscribers of publicly available telephone services in Gibraltar who have not refused to be included in such directories.
- (4) A designated universal service provider shall, subject to regulation 20 of the Privacy Regulations—
- (a) keep a record of all subscribers of publicly available telephone services in Gibraltar, including those with fixed, personal and mobile numbers, who have not refused to be included in that record; and

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- (b) allow access to any information contained in such a record in accordance with such terms and conditions as may be approved by the Authority or as the Authority may direct.

(5) A designated universal service provider shall, for the purposes of this regulation, apply the principle of non-discrimination to the treatment and presentation of information that has been provided to him by other persons or which he has in his possession or under his control.

Public pay telephones and other public voice telephony access points.

5(1). A designated universal service provider shall ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of—

- (a) geographical coverage;
- (b) number of such telephones or other public voice telephony access points;
- (c) accessibility of such telephones and other access public voice telephony points to disabled end-users; and
- (d) quality of services.

(2) The Authority may specify terms and conditions applicable to the provision of public pay telephones for the purpose of ensuring that the requirements specified in sub-regulation (1) are met.

(3) The Authority may, acting in accordance with regulation 28, decide not to make a designation under sub-regulation (1) in relation to all or part of Gibraltar.

(4) A person providing public pay telephones shall ensure that it is possible to make emergency calls from all such telephones using—

- (a) the single European emergency call number “112”; and
- (b) any other emergency call number in Gibraltar that may be specified by the Authority,

in each case free of charge and without the necessity to use coins, cards or any other means of payment.

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(5) A person providing public pay telephones shall ensure that the users of those telephones have access to a directory enquiry service referred to in regulation 4(1)(b).

Measures for disabled end-users.

6.(1) A designated universal service provider shall ensure that the access enjoyed by disabled end-users to the services referred to in regulations 3(3) and 4 is equivalent to that enjoyed by other end-users.

(2) A designated universal service provider shall ensure that disabled end-users can afford access to the services referred to in sub-regulation (1).

(3) For the purposes of sub-regulations (1) and (2), access to the services referred to in sub-regulation 3(3) shall include access to emergency services, directory enquiry services and directories.

(4) The Authority shall, where appropriate, specify and assess obligations applicable to a designated universal service provider pursuant to sub-regulations (1) and (2).

(5) The Authority shall, where appropriate, specify the terms and conditions to be complied with by a designated universal service provider for the purpose of ensuring that disabled end-users can take advantage of the choice of service providers available to the majority of end-users in Gibraltar.

(6) The relevant standards or specifications referred to in section 20 of the Act shall be followed by—

- (a) a designated universal service provider when complying with its obligations under sub-regulations (1) and (2) ;
- (b) the Authority when taking any action under sub-regulations (4) and (5).

Designation of universal service providers.

7.(1) As soon as practicable after the commencement of these Regulations, and without prejudice to regulation 5 (3), the Authority shall designate one or more persons, for such period as may be specified by the Authority, to comply with a universal service obligation so that the whole of the territory of Gibraltar is covered in respect of each of the universal services referred to in regulations 3, 4, 5, 6 and, where applicable, 8 (2).

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(2) The Authority may designate different persons or sets of persons to comply with one or more of the universal service obligations and, for these purposes, different persons may also be designated in respect of each of the obligations referred to in regulation 4 (1) (a), 4 (1) (b) and 4 (4).

(3) For the purpose of designating a person under sub-regulation (1), the Authority shall, by notice issued under section 12 of the Act, adopt a procedure which—

- (a) is efficient, objective and transparent; and
- (b) does not involve, or tend to give rise to, any undue discrimination against any person or description of persons.

(4) The designation procedure referred to in sub-regulation (3) shall ensure that universal service obligations are complied with in a cost effective manner.

(5) The Authority may from time to time—

- (a) review the designations for the time being in force in accordance with this regulation; and
- (b) on such a review, consider which (if any) universal service obligations should continue to apply to each of the designated universal service providers.

(6) The procedure to be followed in the case of every review referred to in sub-regulation (5) must be contained in a notice issued by the Authority under section 12 of the Act and must be one which complies with the requirements set out in sub-regulation (3).

(7) The procedures adopted by the Authority for the purposes of this regulation must provide for a person's designation under sub-regulation (1) to cease to have effect where, in any such case as may be described in the notice, the universal service obligation applied to that person is revoked.

(7A) When a designated universal service provider intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it will notify the Authority of its intention in advance and as soon as reasonably practicable.

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(7B) Upon receiving a notification pursuant sub-regulation (7A), the Authority will assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to regulation 3.

(7C) When conducting the assessment referred to in sub-regulation (7B), the Authority may impose, amend or withdraw specific obligations in accordance with, and within the meaning of, the Authorisation Regulations.

(8) Notwithstanding section 99 of the Act, a person who, on the date of commencement of these Regulations, is required to comply with an obligation under—

- (a) Regulation 6 (provision of access at a fixed location);
- (b) Regulation 7 (directory services);
- (c) Regulation 8 (public pay telephones); or
- (d) Regulation 9 (specific measures for disabled users)

of the Telecommunications (Open Network Provision) (Voice Telephony) Regulations of 2001, shall continue to comply with any such obligations until such time as the equivalent obligation is imposed on a person designated under this regulation.

(9) A person who fails to comply with sub-regulation (8) is guilty of an offence.

Affordability of tariffs for universal services.

8.(1) The Authority shall monitor the evolution and level of retail tariffs for the provision of the universal services identified in regulations 3, 4, 5 and 6, with particular regard to consumer prices and income in Gibraltar, which are charged by either a designated universal service provider or available on the market if no such provider has been designated.

(2) The Authority may require a designated universal service provider to establish schemes for one or more of the following purposes—

- (a) the provision of special tariff options or packages to consumers, in particular for the purpose of ensuring that consumers on low income or with special social needs are not prevented from accessing the network referred in regulation

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3(1) or from using the services referred to in regulations 3(3), 4, 5 and 6 provided by a designated universal service provider;

- (b) the application of a common tariff, or common tariffs, for the provision of the universal services referred to in sub-regulation (1);
- (c) compliance with price caps for the provision of the universal services referred to in sub-regulation (1).

(3) The conditions of a scheme established by a designated universal service provider pursuant to a requirement imposed upon him under sub-regulation (2), shall be—

- (a) fully transparent;
- (b) published; and
- (c) applied in accordance with the principle of non-discrimination.

(4) The Authority may require that the scheme be modified or withdrawn.

(5) The Authority shall ensure the publication of regular reports on how the tariffs which are being charged from time to time for the provision of the universal services referred to in sub-regulation (1) are evolving.

Control of expenditure.

9.(1)A designated universal service provider shall, where he provides facilities and services additional to those in respect of which a universal service obligation has been imposed on him, establish terms and conditions for the provision of such additional facilities and services in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

(2) A designated universal service provider shall, for the purpose of ensuring that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service, provide the specific facilities and services set out in Schedule 1, Part A.

(3) The Authority may waive a requirement imposed on a designated universal service provider under sub-regulation (2) if it is satisfied that the relevant facility or service is widely available in Gibraltar.

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(4) Without prejudice to sub-regulation (3), a universal service provider who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Quality of service of designated universal service providers.

10.(1) A designated universal service provider shall—

- (a) publish adequate and up to date information concerning the performance of his universal service obligations; and
- (b) supply such published information to the Authority.

(2) The information referred to in sub-regulation (1) shall be framed by reference to the quality of service parameters, definitions and measurement methods set out in Schedule 5.

(3) The information referred to in sub-regulation (1) shall be published—

- (a) in such manner as the Authority shall specify;
- (b) to a level that satisfies the Authority that the information complies with the requirements set out in sub-regulations (1) (a) and (2); and
- (c) at such times as the Authority shall specify.

(4) For the purposes of sub-regulation (3) (a), the Authority may specify the content, form and manner of information to be published in order to ensure that consumers and other end users have access to information which is—

- (a) comprehensive;
- (b) user-friendly; and
- (c) capable of allowing comparisons to be made with information published by other persons.

(5) The Authority may, where relevant parameters have been developed, specify additional quality of service standards in order to assess a designated universal service provider's performance in the provision of services to disabled consumers and disabled end-users.

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(6) Sub-regulations (1), (3) and (4) shall apply to the information referred to in sub-regulation (5).

(7) The Authority may impose performance targets on a designated universal service provider. When imposing such targets, the Authority shall have regard to any views expressed by interested parties pursuant to a public consultation carried out in accordance with regulation 28.

(8) The Authority shall monitor a designated universal service provider's compliance with any performance targets that have been imposed on him pursuant to sub-regulation (7).

(9) The Authority may, without prejudice to sub-regulation (1), direct a designated universal service provider to keep and to provide to the Authority, at the Authority's request, all information necessary to enable the Authority to carry out its function pursuant to sub-regulation (8).

(10) The Authority may, in the case of a designated universal service provider's persistent failure to meet performance targets imposed on him pursuant to sub-regulation (7), issue a direction to that provider for the purpose of ensuring that he complies with those targets.

(11) The Authority may arrange, or require a designated universal service provider to whom a performance target has been imposed pursuant to sub-regulation (7) to arrange, an independent audit of the performance data supplied by that designated provider. The Authority may require that provider to meet the costs of any such independent audit.

(12) The reference in sub-regulation (11) to the independent auditing of information is a reference to that information being audited by a person approved by the Authority—

- (a) for accuracy; and
- (b) for its usefulness in the making of comparisons by other persons.

(13) A universal service provider who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Costing of universal service obligations.

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11.(1) Where a designated universal service provider seeks to receive funding for the net cost of complying with a universal service obligation, he shall submit a written application to the Authority for such funding.

(2) An application made pursuant to sub-regulation (1) shall be accompanied by such supporting information as may reasonably be required by the Authority in order to enable it to make a preliminary determination as to whether compliance with a universal service obligation may represent an unfair financial burden on the designated provider.

(3) Where, pursuant to sub-regulation (2), the Authority makes a preliminary determination that compliance with a universal service obligation may represent an unfair financial burden on a designated universal service provider, the Authority shall calculate the net cost for the provision of that service.

(4) Where the designation procedure adopted pursuant to regulation 7 (3) and (4)–

- (a) requires the financial burden of complying with a universal service obligation to be taken into account in determining whom to designate; and
- (b) provides for a particular method of calculating that burden to be used for the purposes of that determination,

that must be the method of calculation applied for the purposes of sub-regulation (3).

(5) Where sub-regulation (4) does not apply, the Authority shall determine the net cost of complying with a universal service obligation in accordance with the calculation method set out in Schedule 2, Part A after allowing for market benefits accruing to the designated universal service provider from–

- (a) his designation; and
- (b) the application to him of universal service obligations.

(6) A designated universal service provider referred to in sub-regulation (1) shall provide such information as is reasonably required by the Authority for the purposes of sub-regulations (3), (4) and (5).

(7) Where the Authority determines that a universal service obligation does not represent an unfair financial burden it shall send a reasoned

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notification of that determination to the designated provider concerned as soon as reasonably practicable after the determination is made.

(8) The accuracy of the accounts and of any other information which has served as the basis for the calculation of the net cost of a universal service obligation shall be audited or verified, as appropriate, either by-

- (a) a person who appears to the Authority to be independent of the parties concerned; or
- (b) the Authority itself.

(9) The Authority must ensure, in the case of every audit carried out under sub-regulation (8), that a report on the audit-

- (a) is prepared; and
- (b) if not prepared by the Authority, is provided to it.

(10) It shall be the duty of the Authority, in the case of every determination under this regulation, to publish-

- (a) its conclusions on the determination; and
- (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that determination.

(11) The publication of anything under sub-regulation (10) must be in such manner as the Authority considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.

Sharing of burden of universal service obligations.

12.(1) This regulation applies where the Authority-

- (a) has concluded, pursuant to a determination made under regulation 11, that complying in relation to any matter with a universal service obligation imposes a financial burden on a particular designated universal service provider; and
- (b) has published that conclusion in accordance with that regulation.

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(2) The Authority must determine, in the case of the designated universal service provider, whether it considers it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.

(3) If—

- (a) the Authority determines that it would be unfair for the designated universal service provider to bear, or to continue to bear, the whole or a part of the burden; and
- (b) an application for a determination under regulation 11 (1) is made to the Authority by that provider,

the Authority may determine that contributions are to be made by persons providing electronic communications networks or electronic communications services in Gibraltar for meeting that burden.

(4) The contributions referred to in sub-regulation (3) may only be requested in respect to the net cost of the universal service obligations as determined in accordance with regulation 11.

(5) The making of any of the following must be in accordance with a notice issued by the Authority pursuant to section 12 of the Act—

- (a) a determination by the Authority of the extent of the financial burden that exists for the designated universal service provider of complying in relation to any matter with universal service obligations;
- (b) an application for the purposes of regulation 11 (1) (a);
- (c) a determination by the Authority of whether it is or would be unfair for the designated universal service provider to bear, or to continue to bear, the burden of complying in relation to any matter with universal service obligations;
- (d) a determination of the extent (if any) to which that is or would be unfair.

(6) The assessment, collection and distribution of contributions under sub-regulation (3) is not to be carried out except in accordance with a sharing mechanism to be established by the Authority in a notice issued under section 12 of the Act.

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(7) The sharing mechanism established under sub-regulation (6) shall secure that the assessment, collection and distribution of contributions under sub-regulation (3) is carried out—

- (a) in an objective and transparent manner;
- (b) in a manner that does not involve, or tend to give rise to, any undue discrimination against particular persons providing electronic communications networks or electronic communications services or particular designated universal service providers, or against a particular description of them;
- (c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition or of market demand; and
- (d) in a manner that complies with the principles set out in Schedule 2, Part B.

(8) The Authority shall publish and make publicly available all information in relation to the principles used for cost sharing, including the details of the sharing mechanism used.

(9) The Authority may choose not to require contributions from persons whose relevant turnover in Gibraltar is less than such amount as may, from time to time, be specified by the Authority, having regard to any views expressed to it pursuant to any consultations carried out pursuant to regulation 28.

(10) The sharing mechanism referred to in sub-regulation (6) shall be administered either by—

- (a) the Authority; or
- (b) such other person as may be designated for that purpose by the Authority.

(11) The person referred to in sub-regulation (10) (b) shall act under the supervision of the Authority and shall be a person who the Authority is satisfied is independent of both—

- (a) the designated universal service providers; and

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- (b) the persons providing electronic communications networks or electronic communications services in Gibraltar.

(12) Contributions which need to be paid in relation to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each person.

(13) The Authority may not impose an obligation to pay a contribution pursuant to this regulation on persons who are not providing an electronic communications service within Gibraltar.

(14) The Authority shall notify each person required to share the cost of a universal service obligation of his obligation to contribute to such cost and the information in such notification shall include the amount, manner and timing of payments to be made.

(15) A person who has been notified pursuant to sub-regulation (14) shall pay the amount specified by the Authority in the time and manner specified by the Authority in its notification.

(16) Any amount payable to the Authority under this regulation that remains unpaid may be recovered by the Authority as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate of 4 % above the Gibraltar base rate on the amount or part thereof remaining unpaid in respect of the period between the date when such amount or part thereof fell due and the date of payment of such amount or part.

(17) Where a sharing mechanism has been established pursuant to sub-regulation (6), the Authority shall prepare and publish an annual report which shall—

- (a) set out every determination made by the Authority that has had effect in relation to a time in that period as a determination of the calculated net cost of complying with a universal service obligation;
- (b) identify the contribution made under sub-regulation (3) by every person who has made a contribution during that period; and
- (c) identify the market benefits that may have accrued for each designated universal service provider during that period.

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(18) When publishing the report referred to in sub-regulation (17), the Authority shall act in accordance with section 6 of the Act and with any other laws on the protection of privacy and confidential business information applicable in Gibraltar.

(19) The first report under sub-regulation (17) must be prepared in relation to the period of twelve months beginning with the issue of the first notice to be made under sub-regulation (6).

(20) Every subsequent report must be prepared in relation to the period of twelve months beginning with the end of the period to which the previous report applied.

(21) Every report under sub-regulation (17)–

- (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and
- (b) must be published as soon as practicable after its preparation is complete.

(22) The publication of a report under sub-regulation (17) must be a publication in such manner as the Authority considers appropriate for bringing it to the attention of the persons who, in its opinion, are affected by the matters to which it relates.

**PART II : REGULATORY CONTROLS ON PERSONS WITH
SIGNIFICANT MARKET POWER IN SPECIFIC RETAIL
MARKETS**

13. *Repealed.*

Regulatory controls on specific retail markets.

14.(1) Where the Authority–

- (a) determines, as a result of a market analysis carried out pursuant to section 40 of the Act, that a given retail market, identified in accordance with section 39 of the Act (“the specific retail market”), is not effectively competitive; and
- (b) concludes that obligations imposed on a person under regulations 10 to 14 of the Access Regulations would not result

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in the achievement of the objectives set out in section 19 of the Act,

it shall impose such regulatory obligations as it considers appropriate to achieve those objectives on persons whom it has determined under section 40 of the Act as having significant market power in the specific retail market.

(2) An obligation imposed by the Authority pursuant to sub-regulation (1) shall be—

- (a) based on the nature of the problem identified pursuant to the market analysis carried out under section 40 of the Act; and
- (b) proportionate and justified in the light of the objectives set out in section 19 of the Act.

(3) An obligation imposed by the Authority pursuant to sub-regulation (1) may include a requirement to ensure that the person concerned does not—

- (a) charge excessive prices;
- (b) inhibit market entry or restrict competition by setting predatory prices;
- (c) show undue preference to specific end-users; or
- (d) unreasonably bundle services.

(4) The Authority may, in order to protect end-users' interests whilst promoting effective competition, require a person to whom sub-regulation (1) applies to comply with—

- (a) retail price cap measures;
- (b) measures to control individual tariffs; or
- (c) measures to orient tariffs towards costs or prices on comparable markets.

(5) Where a person is subject to retail tariff regulation or other relevant retail controls imposed pursuant to this regulation, he shall operate and maintain a cost accounting system that is—

- (a) based on generally accepted accounting practices;

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- (b) suitable for ensuring compliance with this regulation; and
- (c) capable of verification by the Authority.

(6) The Authority may specify the format and accounting methodology to be used by a person to whom sub-regulation (5) applies.

(7) Compliance with the cost accounting system referred to in sub-regulation (5) shall be annually verified by a qualified independent person. For this purpose, the Authority may carry out an audit itself, provided it has the necessary qualified staff, or it may require an audit to be carried out by another qualified person, independent of the person concerned.

(8) A person to whom sub-regulation (5) applies shall publish in his annual accounts a statement concerning his compliance with the cost accounting system he is required to operate pursuant to that sub-regulation.

(9) Without prejudice to regulations 8 (2) and 9, the Authority shall not apply retail control mechanisms under sub-regulation (1) in a relevant retail market in which the Authority is satisfied that effective competition exists.

(10) *Deleted.*

15. *Repealed.*

16. *Repealed.*

PART III : END USERS' INTERESTS AND RIGHTS

Contracts.

17.(1) A person who provides to his subscribers connection to a public communications network and/or to publicly available electronic communications services, shall do so in accordance with a written contract with each of his subscribers.

(2) A contract referred to in sub-regulation (1) shall specify, in a clear, comprehensive and easily accessible manner, at least the following matters–

- (a) the identity and address of the provider;
- (b) the services provided, including in particular–

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- (i) whether or not access to emergency services and caller location information is being provided, and any limitations on the provision of emergency services under regulation 22;
 - (ii) information on any other conditions limiting access to and/or use of services and applications, where such conditions are permitted under Gibraltar or Community law;
 - (iii) the minimum service quality levels offered, namely, the time it will take for the initial connection of the subscriber's equipment to the network, and any other service quality parameters as defined by the Authority;
 - (iv) information on any procedures put in place by the person to measure and shape traffic so as to avoid filling or over-filling a network link, and information on how those procedures could impact on service quality;
 - (v) the types of maintenance service offered to the subscriber, customer support services provided and the means of contacting these services;
 - (vi) any restrictions imposed by the person on the use of terminal equipment supplied;
- (c) where an obligation exists under regulation 21, the subscriber's options as to whether or not to include his personal data in a directory, and the data concerned;
- (d) details of prices and tariffs, the means by which up to date information on all applicable tariffs and maintenance charges may be obtained, methods of payment offered and any differences in costs due to the method of payment by the subscriber;
- (e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including—
- (i) any minimum usage or duration required to benefit from promotional terms,

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- (ii) any charges related to portability of numbers and other identifiers,
- (iii) any charges due on the termination of the contract, including any cost recovery with respect to terminal equipment;
- (f) any compensation and refund arrangements which apply if contracted service quality levels are not met;
- (g) the method for submitting complaints and for initiating procedures for the settlement of disputes in accordance with regulation 29;
- (h) the type of action that might be taken by the person in reaction to security or integrity incidents or threats and vulnerabilities; and
- (i) information, if any, provided by the Authority on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data and relevant to the service provided.

(3) The information specified in sub-regulation (2) shall also be provided, upon request, to end-users other than subscribers.

(4) A person referred to in sub-regulation (1) shall, not less than one month prior to the date of implementation of any proposed modification to the contract, notify all of his subscribers who are likely to be affected by the proposed modification—

- (a) of the proposed modification in the conditions of the contract; and
- (b) their right to withdraw without penalty from the contract if they do not accept the modification.

(4A) The Authority shall specify the format of the notification to subscribers referred to in sub-regulation (4).

(5) A subscriber referred to in sub-regulation (4) shall have the right to withdraw from the contract without penalty if he does not accept the proposed modification.

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(6) This regulation shall apply without prejudice to the consumer protection laws from time to time applicable in Gibraltar and, in particular, the Unfair Terms in Consumer Contracts Act (No. 37 of 1998) and any law from time to time in force in Gibraltar regulating distance selling contracts.

(7) The Authority may, on its own initiative or following a request by a body representing user or consumer interests, direct that the conditions of–

- (a) a contract referred to in sub-regulation (1) or (3); and
- (b) the compensation and refund arrangements referred to in sub-regulation (2) (f),

insofar as such conditions concern matters subject to the provisions of these Regulations, shall be altered in order to protect the rights of users or subscribers.

(8) Any person who is a party to a contract referred to in sub-regulation (1) or (3) shall comply with any direction given in accordance with sub-regulation (7).

(9) A person referred to in sub-regulations (1) or (3) who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Transparency and publication of information.

18.(1) The Authority shall ensure that transparent, comparable, adequate and up to date information on–

- (a) applicable prices and tariffs;
- (b) any charges due on the termination of a contract; and
- (c) standard terms and conditions,

in respect of access to and use of public electronic communications networks and/or publicly available electronic communications services, is available to end users and consumers in accordance with the requirements set out in sub-regulations (2) and (3).

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(2) A person providing a public electronic communications network or a publicly available electronic communications service, or both such network and service, shall be required to provide to end users and consumers the information set out in Schedule 4 in a clear, comprehensive and easily accessible manner and the Authority may specify, by notice issued under section 12 of the Act, additional requirements regarding the form in which such information is to be published.

(3) The Authority shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance, by means of interactive guides or similar techniques.

(4) Where interactive guides or similar techniques are not available on the market free of charge or at a reasonable price, the Authority shall make those facilities available whether itself or through third party procurement.

(5) Third parties shall have a right to use, free of charge, the information published by persons providing electronic communications networks and/or electronic communications services for the purposes of selling or making available interactive guides or similar techniques.

(6) A person providing a public electronic communications network and/or a publicly available electronic communications service, shall—

- (a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions;
- (b) provide information in respect to individual categories of services prior to connecting the call;
- (c) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed;
- (d) inform subscribers of any change to the conditions limiting access to the use of services and/or applications, where such conditions are permitted under Gibraltar and European Community law;
- (e) provide information on any procedures that it has put in place to measure and shape traffic so as to avoid filling or over-filling a network link, and on how those procedures could impact on service quality;

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- (f) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned in accordance with provisions of the Privacy Regulations ; and
- (g) inform disabled subscribers regularly of details of products and services designed for them.

Quality of Service.

18A.(1) The Authority may, by notice issued under section 12 of the Act, specify obligations to be complied with by a person providing a publicly available electronic communications network and/or a publicly available electronic communications service, requiring that person to publish comparable, adequate and up to date information for end-users on the quality of his services and on measures taken to ensure equivalence in access for disabled end-users.

(2) For the purposes of sub-regulation (1), the Authority may specify, in particular—

- (a) the quality-of-service parameters to be measured; and
- (b) the content, form and manner of the information to be published, including possible quality certification mechanisms,

in order to ensure that end-users, including disabled end-users, have access to information which is comprehensive, reliable, user-friendly and capable of allowing comparisons to be made with information published by other persons.

(3) The Authority may, where it considers it appropriate, require that the information to be published in accordance with sub-regulation (1), is framed by reference to the quality of service parameters, definitions and measurement methods set out in Schedule 4.

(4) The Authority may require a person who is required to comply with this regulation or with any requirements imposed on him pursuant to this regulation, to supply to the Authority the information he intends to publish in advance of the publication.

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(5) The Authority may set minimum quality of service requirements on a person providing a public electronic communications network in order to prevent the—

- (a) degradation of service;
- (b) hindering or slowing down of traffic over networks.

(6) Before setting any requirements pursuant to sub-regulation (5), the Authority shall provide the European Commission the following information in a timely manner—

- (a) a summary of the grounds for action;
- (b) the requirements envisaged; and
- (c) the proposed course of action.

(7) The information referred to in sub-regulation (6) shall also be made available to BEREC.

(8) The Authority shall take the utmost account of any comments or recommendations made by the European Commission when deciding on the requirements referred to in sub-regulation (5).

(9) A person shall comply with any requirement imposed on him under sub-regulations (1) and (5) within such reasonable period as the Authority shall specify in the notice it issues for the purpose of those sub-regulations.

(10) The Authority shall, before issuing a notice for the purpose of sub-regulations (1) or (5), have regard to any views expressed to it pursuant to a public consultation carried out in accordance with regulation 28.

(11) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Availability of services.

19.(1) The Authority may specify, by notice issued under section 12 of the Act, obligations to be complied with by a person providing a publicly available electronic communications network and/or a publicly available electronic communications service, in order to ensure the fullest possible availability of publicly available telephone services provided over public

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communications networks in the event of catastrophic network breakdown or in cases of force majeure.

(2) The Authority shall ensure that a person providing a publicly available telephone service shall take all necessary measures—

- (a) to ensure uninterrupted access to emergency services; and
- (b) to maintain, insofar as is practicable, the highest level of service in order to meet any priorities that the Minister, after consultation with the Authority, may specify.

(3) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Ensuring equivalence in access and choice for disabled end-users.

19A.(1) The Authority may specify, where appropriate, the requirements to be met by persons providing publicly available electronic communications services to ensure that disabled end-users—

- (a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and
- (b) benefit from the choice of persons and services available to the majority of end-users.

(2) The Authority shall encourage the availability of terminal equipment offering the necessary services and functions for disabled end-users.

Interoperability of consumer digital television equipment.

20.(1) No person shall sell or rent out or otherwise make available, or offer or expose for sale or rent or otherwise for making available, any equipment to which this sub-regulation applies unless that equipment possesses the capability to—

- (a) allow the descrambling of signals according to the common European scrambling algorithm as administered by the European Telecommunications Standards Institute (ETSI); and
- (b) display television programmes that have been transmitted unscrambled:

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save that if the equipment is rented, this regulation applies only if the rentee is in compliance with the relevant rental agreement.

(2) Sub-regulation (1) applies to all consumer equipment intended for the reception of conventional digital television signals and capable of descrambling such signals, except equipment which was put on the market in the European Community before the date of commencement of these Regulations.

(3) No person shall sell or rent out, or offer or expose for sale or rent, an analogue television set to which this sub-regulation applies unless it is fitted with at least one standardised open interface socket permitting the simple connection of peripherals.

(4) Sub-regulation (3) applies to any analogue television set with an integral viewing screen of visible diagonal greater than 42 centimetres, except a television set which was put on the market in the European Community before the date of commencement of these Regulations.

(5) In sub-regulation (3)–

“a standardised open interface socket” means an interface that would be recognised as such in Gibraltar and in all the Member States;

“peripherals” includes additional decoders and digital receivers.

(6) No person shall sell or rent out, or offer or expose for sale or rent, a digital television set to which this sub-regulation applies unless it is fitted with at least one standardised open interface socket that permits the–

- (a) simple connection of peripherals; and
- (b) passage of all the elements of a digital television signal.

(7) Sub-regulation (6) applies to any digital television set with an integral screen of visible diagonal greater than 30 centimetres, except a television set that was put on the market in the European Community before the date of commencement of these Regulations.

(8) In sub-regulation (6)–

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“a standardised open interface socket” means an interface that would be recognised as such in Gibraltar and in all the Member States or conforms to an industry-wide specification;

“digital television signal” includes information relating to interactive and conditionally accessed services.

(9) It shall be a function of the Authority to monitor compliance with sub-regulation (1).

(10) The Minister shall designate the person who shall be responsible for monitoring compliance with sub-regulations (3) and (6).

(11) A person who fails to comply with sub-regulations (1), (3) or (6) is guilty of an offence.

Telephone directory enquiry services.

21.(1) A person providing a publicly available telephone service shall ensure that his subscribers have the right, without charge, to—

- (a) have an entry in the directory referred to in regulation 4 (1) (a);
- (b) have an entry in the directory enquiry service referred to in regulation 4 (1) (b);
- (c) have their information made available to persons providing directory enquiry services or directories, or both such services and directories; and
- (d) verify, correct or request the removal of any of the entries referred to in paragraphs (a) and (b).

(2) A person who assigns telephone numbers to subscribers shall meet all reasonable requests from a person to whom sub-regulation (1) applies to make available to that person the information referred to in regulation 4 (3).

(3) The requirement set out in sub-regulation (2) shall apply whether or not the person to whom sub-regulation (1) applies has been designated to provide any of the services set out in regulation 4.

(4) When providing information pursuant to sub-regulation (2), a person who assigns telephone numbers to subscribers shall provide the information—

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- (a) on terms that are fair, objective, cost oriented and non-discriminatory; and
- (b) in a format which he has agreed with the person requiring the information or, where no such agreement is reached, in a format which is approved by the Authority.

(5) A person providing a publicly available telephone service to end-users shall ensure that all such end-users can access directory enquiry services in accordance with regulation 4.

(6) The Authority may impose obligations and conditions on persons that control access of end-users for the provision of directory enquiry services in accordance with the provisions of regulation 6 of the Access Regulations.

(7) The obligations and conditions referred to in sub-regulation (6) shall be objective, equitable, non-discriminatory and transparent.

(8) The Authority shall not maintain any regulatory restriction in Gibraltar which prevents—

- (a) an end-user in Gibraltar from having direct access to a directory enquiry service in a Member State; or
- (b) an end-user in a Member State from having direct access to a directory enquiry service in Gibraltar,

by voice call or SMS, and shall take measure to ensure such access in accordance with regulation 24.

(9) This regulation applies subject to the requirements of the Privacy Regulations.

(10) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Emergency call numbers.

22.(1) A person providing a publicly available telephone service (including public pay telephones) shall ensure that end-users are able to call the

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emergency services free of charge, and without having to make any payment, by using—

- (a) the single European emergency call number “112”; and
- (b) any other emergency call number in Gibraltar that may be specified by the Authority.

(2) The Authority, in consultation with the emergency services and persons providing a publicly available telephone service, as appropriate, shall ensure that persons providing end-users with an electronic communications service for originating calls in Gibraltar to a number or numbers in the Gibraltar Telephone Numbering Plan provide access to emergency services.

(3) A person to whom sub-regulation (1) applies shall ensure that calls to the emergency call numbers referred to in that sub-regulation are—

- (a) appropriately answered;
- (b) handled in a manner best suited to the organisation of emergency services in Gibraltar; and
- (c) answered equally expeditiously and effectively.

(4) The Authority shall ensure that—

- (a) access for disabled end-users to emergency services is equivalent to that enjoyed by other end-users; and
- (b) measures taken to ensure that disabled end-users are able to access emergency services whilst travelling in the European Union shall be based to the greatest extent possible on the standards or specifications referred to in section 20 of the Act.

(5) The Authority shall ensure that persons providing a publicly available telephone service make caller location information available free of charge to the entity handling emergency calls as soon as the call reaches that entity for all calls to the emergency call numbers referred to in sub-regulation (1).

(6) The Authority shall establish the criteria for the accuracy and reliability of the caller location information provided.

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(7) The Authority may impose obligations on persons of any particular class or classes that may be specified by the Authority, for the purpose of ensuring that members of the public are adequately informed about the existence and use of the emergency call numbers referred to in sub-regulation (1), in particular through initiatives specifically targeting individuals travelling in the European Union.

(8) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

European telephone access codes.

23.(1) The “00” code is the standard international access code for international calls made from Gibraltar.

(2) Notwithstanding sub-regulation (1), the Minister may specify requirements to be complied with for the purpose of ensuring that—

- (a) special arrangements for making calls from Gibraltar to any other geographical area recognised by the International Telecommunication Union may be established or continued; and
- (b) the end-users in Gibraltar are fully informed of any such arrangements.

(3) A person providing publicly available telephone services shall convey all calls to the European telephony numbering space.

(4) *Deleted.*

(5) The Authority may by notice issued under section 12 of the Act specify requirements for the purposes of ensuring that sub-regulations (3) are complied with.

(6) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Minister or the Authority pursuant to this regulation, is guilty of an offence.

Harmonised numbers for harmonised services of social value.

23A. (1) The Authority shall promote the specific numbers in the numbering range beginning with “116” identified by Commission Decision

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2007/116/EC¹ on reserving the national numbering range beginning with “116” for harmonised numbers for harmonised services of social value.

(2) The Authority shall encourage the provision within Gibraltar of the services for which numbers are reserved.

(3) The Authority shall ensure that disabled end-users are able to access services provided under the “116” numbering range to the greatest extent possible.

(4) The Authority shall ensure that end-users, including visitors to Gibraltar, are adequately informed of the existence and use of services provided under the “116” numbering range.

(5) The Authority shall ensure that end-users have access to a service operating a hotline to report cases of missing children using the number “116000”.

Access to numbers and services.

24.(1) The Authority shall ensure that, where technically and economically feasible, end-users have the ability to—

- (a) access and use services using non-geographic numbers within the European Union, and
- (b) access all numbers provided in the European Union, regardless of the technology and devices used by the operator, including those in the national numbering plan of Member States, those from ETNS and Universal International Freephone Numbers (UIFN).

(2) Sub-regulation (1) shall not apply where a called subscriber has chosen for commercial reasons to limit access to calling parties located in specific geographical areas.

(3) A person providing a public communications network and/or a publicly available electronic communications service, shall, at the request of a law enforcement agency in Gibraltar, block, on a case by case basis, access to numbers or services where this is justified by reasons of fraud or misuse.

¹ OJ L 49, 17.2.2007, p30.

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(4) A person providing an electronic communications service shall withhold relevant interconnection or other service revenues if requested to do so by a law enforcement agency in Gibraltar for the purposes of sub-regulation (3).

(5) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to sub-regulation (1), is guilty of an offence.

Provision of additional facilities.

25.(1) Without prejudice to regulation 9(2) and subject to sub-regulation (5), the Authority shall ensure that every person providing publicly available telephone services and/or access to public communications networks, shall make available all or part of the additional facilities listed in Schedule 1, Part A, and, where technically feasible and economically viable, all or part of the additional facilities listed in Schedule 1, Part B.

(2) Where the person referred to in sub-regulation (1) decides that the provision of the facilities listed in Schedule 1, Part B is not technically feasible or economic viable, he shall promptly notify the Authority of his decision and provide to the Authority all the information which has led him to take such a decision.

(3) The Authority shall consider the information provided to it pursuant to sub-regulation (2) and any other information it considers relevant and shall either agree or disagree with the decision notified to it pursuant to sub-regulation (2).

(4) Where the Authority disagrees with the decision notified to it pursuant to sub-regulation (2), it may issue a direction to the person concerned requiring him to provide the facilities listed in Schedule 1, Part B.

(5) If the Authority considers, after taking into account any views expressed to it pursuant to a public consultation carried out in accordance with regulation 28, that there is sufficient access to the facilities referred to in sub-regulation (1), it may decide not to apply the obligation under sub-regulation (1) on any person.

(6) *Deleted.*

(7) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Facilitating change of provider.

26.(1) All subscribers with numbers from the Gibraltar Numbering Plan shall be able, if they so request, to retain their number independently of the person providing the service, in accordance with the provisions of Schedule 1, Part C.

(2) The Authority shall, by notice issued under section 12 of the Act, specify obligations for compliance by operators and/or service providers for the purpose of ensuring that—

- (a) pricing for the provision of number portability in accordance with sub-regulation (1) is cost oriented; and
- (b) direct charges to subscribers, if any, do not act as a disincentive against changing provider.

Obligations under this sub-regulation may include a requirement that there shall be no direct charges to subscribers for number portability.

(3) Where retail tariffs for porting of numbers are permitted, the Authority shall ensure that such tariffs are not imposed in a manner that would distort competition and the Authority may, by notice issued under section 12 of the Act, specify obligations to be complied with for this purpose.

(4) Porting of numbers and their subsequent activation shall be carried out within the shortest possible time.

(5) Where an agreement to port a number has been concluded with the subscriber, the number shall be activated within one working day.

(6) Without prejudice to sub-regulation (4) and (5), the Authority may establish a process for number portability taking into account—

- (a) provisions on contracts under Gibraltar law;
- (b) technical feasibility; and
- (c) the need to maintain continuity of service to the subscriber.

(7) Loss of service during the process of porting shall, in no circumstances, exceed one working day.

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(8) The Authority shall ensure that subscribers are protected during the switching process and are not switched to another provider against their will.

(9) A person who delays or abuses the porting process of a subscriber, shall be required to pay compensation to the subscriber in such terms and at such level as may be set by the Authority pursuant to a compensation order issued under this regulation.

(10) The Authority may make a compensation order under this regulation, in particular, where it considers that a subscriber has suffered damage as a result of delay or abuse of the porting process.

(11) No compensation order shall be made where a person proves that he had taken such care as in all the circumstances was reasonably required to comply with the requirements of this regulation.

(12) A person providing electronic communications services—

- (a) shall not require a subscriber to enter into a contract for a service that exceeds 24 months; and
- (b) shall offer a subscriber the possibility to enter into a contract for a service with a maximum duration of 12 months.

(13) Without prejudice to any minimum contractual period, the Authority shall ensure that conditions and procedures for termination of contracts do not act as a disincentive against changing service provider.

(14) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Must-carry obligations.

27.(1) The Authority may, by notice issued under section 12 of the Act, set obligations to be complied with for the purpose of securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the obligations.

(1A) The services referred to in sub-regulation (1) shall include accessibility services to enable appropriate access for disabled end-users.

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(2) An obligation set pursuant to this regulation is not (subject to sub-regulation (4)) to require a service to be broadcast or otherwise transmitted by means of an electronic communications network unless—

- (a) the service is included in the list of must-carry services; and
- (b) the effect of the requirement is confined to networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes.

(3) That list shall be set out by the Minister in a direction.

(4) Obligations set pursuant to this regulation in relation to a listed service must, to such extent as the Authority considers appropriate (and subject to sub-regulation (5))—

- (a) apply the requirement to broadcast or otherwise transmit that service to every service which is an ancillary service by reference to the listed service; and
- (b) provide for the listed service to be treated for the purposes of the obligations as constituting such other services comprised in or provided with that service as may be determined by the Authority.

(5) Obligations set pursuant to this regulation must also comply with all such restrictions (if any) as may be imposed by a direction issued by the Minister as to the maximum and minimum amounts, or proportions, of available capacity that are to be required by such obligations to be used in the case of a network for the broadcasting or other transmission of particular services, or descriptions of service.

(6) In issuing a direction for the purpose of sub-regulation (5) the Minister must have regard to—

- (a) the objective of securing that services included in the list of must-carry services, and the other services to which obligations set in accordance with this regulation are likely to be applied by virtue of sub-regulation (4), are available for reception by as many members of the public in Gibraltar as practicable; and
- (b) the need to secure that the amount of capacity available in the case of every network for making other services available is

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reasonable and, accordingly, that the burden of complying with obligations set in accordance with this regulation is proportionate to the public benefit to be secured by that objective.

(7) It shall be the duty of the Minister from time to time to review—

- (a) the list of must-carry services; and
- (b) any requirements for the time being in force under this regulation with respect to the terms on which services must be broadcast or otherwise transmitted.

(8) Where the Minister carries out such a review, he must consult the following about the matters under review—

- (a) the Authority; and
- (b) such persons who, in his opinion, are likely to be affected by a modification of the list of must-carry services, or who represent any of those persons, as he thinks fit.

(9) If, on such a review, he considers it appropriate to do so, the Minister may by direction modify the list of must-carry services.

(10) In determining whether it is appropriate for the purposes of sub-regulation (9) to add a service to the list of must-carry services or to remove it, the Minister must have regard, in particular, to—

- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;
- (b) the extent to which the service (if it were not included in the list) would nevertheless be made available to an acceptable technical standard by means of the networks to which obligations set in accordance with this regulation apply;
- (c) the capacity left available, after the requirements of those obligations have been complied with, for the broadcasting or other transmission of material by means of each of those networks; and
- (d) the need to secure that the burden of complying with obligations so set is proportionate to the objective of securing

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that the services in the list of must-carry services, and the other services to which obligations set in accordance with this regulation are likely to be applied by virtue of sub-regulation (4), are available for reception by as many members of the public in Gibraltar as practicable.

(11) The Minister may also, if (whether on such a review or in any other circumstances) he considers it appropriate to do so, by direction make provision imposing requirements as to what, as between—

- (a) the person providing a must-carry service; and
- (b) the person providing a network by means of which it is to be provided,

are to be the terms on which the service is to be broadcast or otherwise transmitted, in pursuance of obligations set in accordance with this regulation, by means of that network.

(12) A direction issued for the purpose of sub-regulation (11) may provide for the terms to be determined by the Authority in accordance with the provisions of the direction.

(13) Before issuing a direction for the purpose of sub-regulation (5), and before issuing a direction for the purpose of sub-regulation (11) in a case in which there has been no review under sub-regulation (7), the Minister must consult—

- (a) the Authority; and
- (b) such persons who, in his opinion, are likely to be affected by the direction, or who represent any of those persons, as he thinks fit.

(14) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

PART IV : GENERAL PROVISIONS

Consultation with interested parties.

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28.(1) The Authority shall, where specified in these Regulations and otherwise where it considers it appropriate to do so, have regard to the views of—

- (a) end-users;
- (b) consumers (including, in particular, disabled consumers);
- (c) persons who provide electronic communications services or electronic communications networks; and
- (d) manufacturers of electronic communications equipment,

on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where such issues have a significant impact on the market.

(2) The Authority shall conduct the consultations referred to in sub-regulation (1) in accordance with the public consultation procedure.

(3) Without prejudice to any enactment promoting cultural and media policy objectives, the Authority may promote co-operation between persons providing electronic communications networks and/or electronic communications services, and sectors interested in the promotion of lawful content in electronic communications networks and services.

Procedures for the handling of complaints and for the resolution of disputes involving consumers and other end users.

29.(1) This regulation applies to every person who is required to comply with an obligation, condition or any other requirement imposed upon him under or pursuant to these Regulations.

(2) The Authority shall ensure that every person to whom this regulation applies implements and publishes a code of practice which sets out the procedures he will apply for the purpose of—

- (a) handling complaints made to him by; and
- (b) resolving disputes he may have with,

consumers, and any other end-users as the Authority may specify, concerning an alleged infringement of these Regulations or of an obligation,

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condition or any other requirement imposed upon him pursuant to these Regulations.

(3) The code of practice referred to in sub-regulation (2) shall make provision for at least the following matters—

- (a) a first point of contact for complainants;
- (b) a means of recording complaints;
- (c) a time frame within which the person concerned shall respond to complaints;
- (d) the procedures for resolving disputes;
- (e) the remedies and redress available in respect of matters that form the subject matter of a complaint or dispute;
- (f) appropriate cases where reimbursement of payments and payments in settlement of losses incurred will be made; and
- (g) retention of records of complaints (including copies of the complaint, any response thereto, any determination in respect of the complaint and any documentation considered in the course of such determination) for a period of not less than one year following the resolution of the complaint or the dispute, as the case may be.

(4) A person to whom this regulation applies shall submit to the Authority, for the Authority's approval, the code of practice he intends to implement for the purpose of complying with his obligation under sub-regulation (2) and such a person shall not apply or publish the code until such time as it has been approved by the Authority.

(5) The Authority may issue a direction to a person who has complied with his obligation under sub-regulation (4) requiring him to make such modifications or additions to his code of practice as the Authority considers appropriate and specifies in the direction.

(6) Sub-regulations (4) and (5) shall apply to any modification or addition which a person intends to make to his code of practice after it has been approved by the Authority and no such modification or addition shall be applied or published by that person until such time as it has been approved by the Authority.

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(7) The Authority shall not approve a code of practice or any modification or addition to it, unless it is satisfied that the procedures set out in the code for the handling of complaints and for the resolution of disputes are simple, inexpensive and such as to enable disputes to be settled fairly, promptly and in a transparent and non-discriminatory manner.

(8) A person shall publish the approved code of practice in such manner as the Authority considers appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected by it.

(9) It shall be the duty of the Authority to keep under review the codes of practice for the time being approved by it.

(10) The Authority may at any time, by a notice issued or published in such manner as it considers appropriate—

- (a) approve a code;
- (b) approve modifications or additions that have been made to an approved code;
- (c) withdraw its approval from a code; or
- (d) advise that the withdrawal of its approval will take effect from such time as may be specified in the notice unless such modifications of the code as are specified in the notice are made before that time.

(11) The Authority, or an independent person appointed by the Authority, may, in accordance with such procedures as may be specified by the Authority, resolve disputes which remain unresolved after due completion of the dispute resolution procedure contained in a code of practice referred to in sub-regulation (2).

(12) It shall be the duty of the Authority to ensure that the procedures established pursuant to sub-regulation (11) are simple, inexpensive and such as to enable disputes to be settled fairly, promptly and in a transparent manner.

(13) The Authority shall publish the procedures established pursuant to sub-regulation (11) and any modifications or additions made to those procedures in such manner as it considers appropriate for bringing them to the attention of the persons who, in its opinion, are likely to be affected by them.

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(14) The Authority may, for the purposes of sub-regulation (11), issue a direction to a person requiring that person to comply with such measures as it, or the independent person, as the case may be, may specify for the resolution of the dispute. Such measures may include, where appropriate, a requirement for the reimbursement of payments and payments in settlement of losses incurred.

(15) Unless alternative arrangements for payment of remuneration and expenses of an independent person referred to in sub-regulation (11) exist, the Authority may pay that person such remuneration and expenses as the Authority considers appropriate and the amount of such payments shall be included in the expenses of the Authority for the purposes of section 9 of the Gibraltar Regulatory Authority Act 2000.

(16) A person may, where a dispute involves parties in Gibraltar and one or more Member States, request the Authority to co-ordinate its efforts with the regulatory authority in the Member State or States concerned with a view to resolving the dispute.

(17) The procedures for the resolution of disputes referred to in this regulation shall be without prejudice to the rights of any person to apply to a court, save insofar as the parties concerned have entered into an agreement for the resolution of disputes between them which provides otherwise.

(18) A person who fails to comply with this regulation, or with any obligation, condition or requirement imposed upon him by the Authority pursuant to this regulation, is guilty of an offence.

Notification, monitoring and review procedures.

30.(1) The Authority shall, by the date of commencement of these Regulations, notify to the European Commission the names of the persons who have been designated under regulation 7(1).

(2) The Authority shall notify to the European Commission any changes in the names notified pursuant to sub-regulation (1) immediately after such changes are made.

(3) The Authority shall notify to the European Commission the universal service obligations imposed upon the persons who have been designated under regulation 7(1).

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(4) The Authority shall notify to the European Commission any changes affecting the obligations referred to in sub-regulation (3) or the persons designated under regulation 7(1) immediately after such changes are made.

Notices regarding imposition of obligations.

31.(1) The Authority shall ensure the publication of a notice setting out the obligations which have been imposed pursuant to these Regulations and such notice shall include information on where copies of a statement of the obligations can be obtained.

(2) When the Authority amends or revokes any obligations imposed by it pursuant to these Regulations, sub-regulation (1) shall apply accordingly.

Enforcement and Compliance.

32.(1) The Authority shall monitor compliance with these Regulations, other than regulation 20 (3) and (5).

(2) Where the Authority finds that a person has contravened an obligation, condition or requirement imposed on him pursuant to a designation under regulation 7 or otherwise under or pursuant to regulations 3, 4, 5, 6, 8 (2), 13, 14, 15 or 16, the Authority shall seek compliance with any such obligation, condition or requirement by that person in accordance with the procedure set out in regulations 19 to 30 of the Authorisation Regulations.

(3) Where an obligation, condition or requirement set out in, or imposed on a person pursuant to, these Regulations forms part of general, numbering or licence condition within the meaning of regulation 17 of the Authorisation Regulations applicable to that person, a contravention of such an obligation, condition or requirement shall constitute a contravention of a condition within the meaning of regulation 17 of the Authorisation Regulations to which the procedure set out in regulations 19 to 30 of the Authorisation Regulations applies.

Penalty for offences.

33. A person guilty of an offence under any provision of these Regulations shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine.

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SCHEDULE 1

Regulations 9(2), and 25 and 26

**DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO
IN REGULATIONS 9, 25 and 26****Part A : Facilities and services referred to in Regulation 9****(a) Itemised billing**

The Authority may, subject to the requirements of relevant legislation on the protection of personal data and privacy applicable in Gibraltar, lay down the basic level of itemised bills which are to be provided by persons providing a publicly available telephone service to subscribers free of charge in order that subscribers can—

- (i) allow verification and control of the charges incurred in using the public communications network at a fixed location or related publicly available telephone services or both such network and services, and
- (ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills. Where appropriate, additional levels of detail may be offered to subscribers at a reasonable tariff or at no charge. Calls which are free of charge to the calling subscriber, including calls to help lines, are not to be identified in the calling subscribers' itemised bill.

(b) Selective barring for outgoing calls or premium SMS or MMS, or, where technically feasible, other kinds of similar applications, free of charge.

This is a facility whereby a subscriber can, on request to the designated universal service providers that provide telephone services, bar outgoing calls, or premium SMS or MMS, or other kinds of similar applications of defined types or to defined types of numbers.

(c) Pre-payment systems.

The Authority may require designated universal service providers to provide adequate means to enable consumers to pay for access to the public

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communications network and use of publicly available telephone services on prepaid terms.

(d) Phased payment of connection fees.

The Authority may require designated universal service providers to allow consumers to pay for connection to the public communications network on the basis of payments phased over time.

(e) Non-payment of bills.

- (i) The Authority shall authorise specified measures to ensure that, in cases of non-payment by a subscriber of telephone bills, due warning is given to that subscriber before—
 - (a) the service which he is receiving is interrupted; or
 - (b) he is disconnected from the network, as a result of such non-payment.
- (ii) The measures referred to in paragraph (i) shall be proportionate, non-discriminatory and published in accordance with regulation 18.
- (iii) Except in the case of any one or more of the following—
 - (a) fraud,
 - (b) persistent late payment of the telephone bills referred to in paragraph (i), or
 - (c) non-payment of the telephone bills referred to in paragraph (i),

the said measures shall ensure, as far as is technically feasible, that any interruption of a service is limited to interruption of the service the subject of the unpaid bill.

- (iv) The Authority may decide that, where appropriate, complete disconnection from the network for non-payment of the bill takes place only after such a period as the Authority may prescribe. During such period, calls for which the subscriber the subject of the disconnection does not incur charges (e.g. “112” calls) shall be permitted.

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(f) Tariff advice.

This is a facility whereby subscribers may request the person to provide information regarding alternative lower cost tariffs, if available.

(g) Cost control.

This is a facility whereby persons offer other means, if determined to be appropriate by the Authority, to control the costs of publicly available telephone services, including free of charge alerts to consumers in case of abnormal or excessive consumption patterns.

Part B : Facilities referred to in Regulation 25.

(a) Tone dialling or DTMF (dual-tone multi-frequency operation).

This is a facility whereby the public communications network and/or publicly available services support the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within Gibraltar and between Gibraltar and a Member State.

(b) Calling-line identification.

This is a facility whereby the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive 2002/58/EC.

To the extent technically feasible, data and signals should be provided to facilitate the offering of calling-line identity and tone dialling across boundaries within the European Community.

Part C: Implementation of the number portability provisions referred to in regulation 26.

The requirement that all subscribers with numbers from the Gibraltar Numbering Plan, who so request can retain their number or numbers independently of the person providing the service shall apply:

- (a) in the case of geographic numbers, at a specific location; and
- (b) in the case of non-geographic numbers, at any location.

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This part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

SCHEDULE 2

Regulations 11 (5) and 12 (7)

CALCULATION METHOD FOR DETERMINING THE NET COST OF COMPLYING WITH A UNIVERSAL SERVICE OBLIGATION IN THE CIRCUMSTANCES DESCRIBED IN REGULATION 11 (5) AND THE PRINCIPLES APPLICABLE TO A SHARING MECHANISM IN ACCORDANCE WITH REGULATION 12 (7)**Part A : Calculation method for determining the net cost of complying with a universal service obligation in the circumstances described in regulation 11 (5).**

Universal service obligations are those obligations placed on a person which concern the provision of a network and service throughout Gibraltar, including, where required, averaged prices for the provision of that service or provision of specific tariff options for consumers with low incomes or with special social needs.

The Authority must consider all means to ensure appropriate incentives for persons (designated or not) to provide universal service obligations cost efficiently. In carrying out a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and operating without such obligations. This applies whether the network in Gibraltar is fully developed or is still undergoing development and expansion. Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the person providing a universal service.

The calculation is to be based upon the costs attributable to—

- (i) *elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.*

This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled people, etc;

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- (ii) *specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the Authority, can only be served at a loss or under cost conditions falling outside normal commercial standards.*

This category includes those end-users or groups of end-users who would not be served by a person who did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately in order to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any person is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the Authority.

Part B : Principles applicable to a sharing mechanism in accordance with regulation 12 (7).

The recovery or financing of any net costs of universal service obligations requires designated universal service providers to be compensated for the services they provide under non-commercial conditions. Since such a compensation involves financial transfers, the Authority must ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with Article 13(3) of the Universal Service Directive, a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of persons.

The independent person administering the fund is to be responsible for collecting contributions from those who are assessed as liable to contribute to the net cost of universal service obligations in Gibraltar and is to oversee the transfer of sums due and/or administrative payments to the persons entitled to receive payments from the fund.

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SCHEDULE 3

Repealed.

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SCHEDULE 4

Regulation 18(2)

**INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH
REGULATION 18**

1. The name and address of the head office of the person on whom the relevant obligation under regulation 18 has been imposed.
2. Description of services offered, including—
 - (a) scope of services offered;
 - (b) standard tariffs indicating the services provided and the content of each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment;
 - (c) compensation and refund policies, including specific details of any compensation or refund schemes offered;
 - (d) types of maintenance service offered;
 - (e) standard contract conditions, including any minimum contractual period, termination of the contract and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.
3. Dispute settlement mechanisms including those developed by the person on whom the relevant obligation under regulation 18 has been imposed.
4. Information about rights as regards universal service, including, where appropriate, the facilities and services mentioned in Schedule 1.

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SCHEDULE 5

Regulations 10 (2) and 18 (6)

QUALITY OF SERVICE PARAMETERS

Quality-of-Service Parameters, Definitions and Measurement Methods referred to Regulations 10 (2) and 18 (6)

For persons providing access to a public communications network.

Parameter (Note 1)	Definition	Measurement method
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Fault rate per access line	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

For persons providing a publicly available telephone service

Call set up time (Note 2)	ETSI EG 202 057	ETSI EG 202 057
Response times for directory enquiry services	ETSI EG 202 057	ETSI EG 202 057
Proportion of coin and card operated public pay-telephones in working order	ETSI EG 202 057	ETSI EG 202 057
Bill correctness complaints	ETSI EG 202 057	ETSI EG 202 057
Unsuccessful call ratio (Note 2)	ETSI EG 202 057	ETSI EG 202 057

Note: Version number of ETSI EG 202 057-1 is 1.3.1 (July 2008).

(1) Parameters should allow for performance to be analysed at a local level (i.e. no less than Level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

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(2) Member States may decide not to require that up-to-date information concerning the performance for these two parameters be kept, if evidence is available to show that performance in these two areas is satisfactory.