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**COMMUNICATIONS (UNIVERSAL SERVICE AND USERS'  
RIGHTS) REGULATIONS 2006**

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**Subsidiary  
2006/072**

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

**COMMUNICATIONS (UNIVERSAL SERVICE AND  
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**(LN. 2006/072)**

**5.6.2006**

**EU Legislation/International Agreements involved:**

Directive 92/44/EC

Directive 2002/22/EC

Directive 2002/58/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.(1) 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 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.**

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3.(1) A designated universal service provider shall satisfy all reasonable requests for—

- (a) connection at a fixed location to the public telephone network; and
- (b) access to publicly available telephone services at a fixed location.

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

- (a) local and international telephone calls ;
- (b) facsimile communications; and
- (c) data communications at data rates that are sufficient to permit functional Internet access.

(3) Where a designated universal service provider denies any reasonable request made under sub-regulation (1) 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.

(4) 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 and access referred to in sub-regulation (1) shall be provided;
- (c) the reasonableness of requests for the connection and access referred to in sub-regulation (1); 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 the laws in force in Gibraltar concerning the processing of personal data and the protection of privacy in the electronic communications sector–

- (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 the laws in force in Gibraltar concerning the processing of personal data and the protection of privacy in the electronic communications sector–

- (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.**

5. A designated universal service provider shall ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of—

- (a) geographical coverage;
- (b) number of such telephones;
- (c) accessibility of such telephones to disabled 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).

**Specific measures for disabled users.**

6.(1) A designated universal service provider shall ensure that the access enjoyed by disabled end-users to publicly available telephone services 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 publicly available telephone services.

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

(4) The Authority shall, where appropriate, specify 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.

**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).

(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—

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- (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.
- (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

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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 charged by a designated universal service provider for the provision of the universal services identified in regulations 3, 4, 5 and 6.

(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 incomes or with special social needs are not prevented from accessing or using the publicly available telephone service;
- (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.

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**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.

(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

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(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.

(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 with respect to any universal service obligation imposed on him. 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-

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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.**

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,

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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 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

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- (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.

(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—



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- (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.

(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.

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(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
- (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

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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.

(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

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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 A RELEVANT MARKET****Continuation of existing obligations.**

13.(1) Notwithstanding section 99 of the Act, a person who, before the date of commencement of these Regulations, is required to comply with an obligation in respect of—

- (a) retail tariffs for the provision of access to and use of the public telephone network, imposed pursuant to regulation 18 of the Telecommunications (ONP) (Voice Telephony) Regulations of 2001 (LN No. 90 of 2001);
- (b) leased lines, imposed pursuant to regulations 5, 6, 8, 9, 10 or 11 of the Telecommunications (Leased Lines) Regulations of 2001 (LN. No. 84 of 2001);
- (c) carrier selection or pre-selection, imposed pursuant to regulation 13 of the Telecommunications (Interconnection) Regulations of 2001 (L.N. No. 88 of 2001),

shall continue to comply with any such obligation.

(2) A person required to comply with an obligation referred to in sub-regulation (1) (a) shall continue to comply with that obligation until such time as the Authority makes a determination to—

- (a) impose obligations on a person pursuant to regulation 14; or
- (b) withdraw that obligation without imposing new obligations pursuant to regulation 14.

(3) A person required to comply with an obligation referred to in sub-regulation (1) (b) shall continue to comply with that obligation until such time as the Authority makes a determination to—

- (a) impose obligations on a person pursuant to regulation 15; or
- (b) withdraw that obligation without imposing new obligations pursuant to regulation 15.

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(4) A person required to comply with an obligation referred to in sub-regulation (1) (c) shall continue to comply with that obligation until such time as the Authority makes a determination to—

- (a) impose obligations on a person pursuant to regulation 16; or
- (b) withdraw that obligation without imposing new obligations pursuant to regulation 16.

(5) In making a determination pursuant to sub-regulations (2), (3) or (4) the Authority shall act in accordance with section 40 of the Act.

(6) The Authority shall make the determinations referred to in sub-regulations (2), (3) and (4) as soon as practicable after the date of entry into force of these Regulations.

**Regulatory controls on 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 relevant retail market”), is not effectively competitive; and
- (b) concludes that obligations imposed on a person under regulation 16 or the Access Regulations would not result 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 relevant 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.

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(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;
- (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.

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(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) It shall be the duty of the Authority to provide the European Commission with all such information as the Commission requires it to provide about—

- (a) any retail controls applied; and
- (b) where appropriate, the cost accounting systems used by the persons concerned.

**Regulatory controls on the minimum set of leased lines.**

15.(1) This regulation applies where the relevant market relates to the provision of part or all of the minimum set of leased lines as are for the time being identified by the European Commission in the List of Standards published in the Official Journal of the European Communities pursuant to Article 17 of the Framework Directive, and for this purpose different leased lines in the minimum set may constitute separate relevant markets.

(2) Where the Authority—

- (a) determines, as a result of a market analysis carried out pursuant to section 40 of the Act, that the relevant market is not effectively competitive; and
- (b) determines, under section 40 of the Act, that a person has significant market power in that market,

it shall impose obligations on such a person in relation to that market.

(3) The obligations referred to in sub-regulation (2) shall consist of obligations—

- (a) regarding the provision of part or all of the minimum set of leased lines identified as constituting the relevant market; and
- (b) requiring that person to apply the principles of non-discrimination, cost orientation and transparency as set out in Schedule 3 in relation to such provision.

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(4) Where, as a result of a market analysis conducted for the purposes of sub-regulation (2), the Authority determines that a relevant market for the provision of leased lines in the minimum set is effectively competitive, it shall withdraw the obligations referred to in regulation 13 (1) (a) in relation to that market.

**Carrier selection and carrier pre-selection.**

16. (1) Where the Authority—

- (a) determines, as a result of a market analysis carried out pursuant to section 40 of the Act, that the market consisting of the provision of connection to and use of the public telephone network at a fixed location (“the relevant market”), is not effectively competitive; and
- (b) determines, under section 40 of the Act, that a person has significant market power in that market,

it shall impose obligations on such a person in relation to that market.

(2) The obligations referred to in sub-regulation (1) shall consist of obligations requiring that person to enable his subscribers to select the services of any interconnected provider of publicly available telephone services—

- (a) on a call-by-call basis by dialling a carrier selection code; and
- (b) by means of pre-selection, with a facility to over-ride any pre-selected choice on a call-by-call basis by dialling a carrier selection code.

(3) The Authority may, pursuant to a market analysis carried out under section 40 of the Act, determine that user requirements for the facilities referred to in sub-regulation (2) shall be implemented on other networks or in other ways.

(4) A determination made by the Authority pursuant to sub-regulation (3) shall be implemented in accordance with regulation 13 of the Access Regulations.

(5) Where the Authority imposes an obligation on a person pursuant to sub-regulation (1), it shall also set such conditions as it considers appropriate—



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- (a) with respect to the relationship to costs of any prices fixed for the use of the facilities described in sub-regulation (2); and
- (b) for the purpose of securing that prices and other charges imposed on subscribers do not constitute a disincentive to the use of such facilities.

## **PART III : END USERS' INTERESTS AND RIGHTS**

### **Contracts.**

17.(1) A person who provides to his subscribers connection or access, or both connection and access, to the public telephone network 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 at least the following matters—

- (a) the identity and address of the provider;
- (b) the services provided, the service quality levels offered and the time it will take for the initial connection of the subscriber's equipment to the network;
- (c) the types of maintenance service offered to the subscriber;
- (d) particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges may be obtained by the subscriber;
- (e) the duration of the contract and the conditions for renewal and termination of services and of the contract;
- (f) any compensation and refund arrangements which apply if contracted service quality levels are not met; and
- (g) the method for submitting complaints and for initiating procedures for the settlement of disputes in accordance with regulation 29.

(3) Where a provider of electronic communications services, who is not a person of the type referred to in sub-regulation (1), enters into a contract with a consumer, he shall ensure that such a contract includes the information specified in sub-regulation (2).

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(4) A person referred to in sub-regulations (1) or (3) 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.

(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.

(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.**

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18.(1) The Authority shall ensure that transparent and up to date information on—

- (a) applicable prices and tariffs; and
- (b) standard terms and conditions,

in respect of access to and use of publicly available telephone services is available to end users and consumers in accordance with the requirements set out in sub-regulations (2) and (3).

(2) A person providing a public telephone network or a publicly available telephone service, or both such network and service, shall be required to provide to end users and consumers such of the information set out in Schedule 4 as the Authority shall specify by notice issued under section 12 of the Act.

(3) The Authority shall encourage the provision of information to enable end-users, as far as appropriate and practicable, and consumers to make an independent evaluation of the cost of alternative usage patterns.

(4) The Authority may, by notice issued under section 12 of the Act, specify obligations to be complied with by a person providing publicly available electronic communications services requiring that person to publish adequate and up to date information for end-users on the quality of his services.

(5) For the purposes of sub-regulation (4), the Authority may specify, in particular—

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

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

(6) The Authority may, where it considers it appropriate, require that the information to be published in accordance with sub-regulation (4), is framed by reference to the quality of service parameters, definitions and measurement methods set out in Schedule 5.

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(7) 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.

(8) A person shall comply with any requirement imposed on him under sub-regulation (4) within such reasonable period as the Authority shall specify in the notice it issues for the purpose of that sub-regulation.

(9) The Authority shall, before issuing a notice for the purpose of sub-regulation (4), have regard to any views expressed to it pursuant to a public consultation carried out in accordance with regulation 28.

(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.

**Integrity of the network.**

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 public telephone network at fixed locations, in order to ensure—

- (a) that the integrity of such a network is maintained; and
- (b) the availability of the public telephone network and publicly available telephone services at fixed locations 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 at fixed locations shall take all reasonable steps—

- (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.

**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:

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

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(2) Sub-regulation (1) applies to all consumer equipment intended for the reception of 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)–

“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.

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(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.

**Operator assistance and directory 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); and
- (c) 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—

- (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 connection to the public telephone network to end-users shall ensure that all such end-users can access operator assistance services and a directory enquiry service in accordance with regulation 4.

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(6) 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 access to a directory enquiry service in Gibraltar.

(7) This regulation applies subject to the requirements of the laws from time to time in force in Gibraltar on the protection of personal data and privacy.

(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.

**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 emergency services free of charge, 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) 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 and handled under sub-paragraphs (a) and (b) in a manner that takes full advantage of the technological possibilities of the networks.

(3) A person providing a public telephone network shall, to the extent technically feasible, make caller location information available to the



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authorities handling emergency services for all calls to the emergency call numbers referred to in sub-regulation (1).

(4) 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).

(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 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 of publicly available telephone services in Gibraltar are fully informed of any such arrangements.

(3) A person providing a public telephone network shall convey all calls originating on or transiting through his network to the European telephony numbering space.

(4) A person may recover the cost for conveying calls on his network pursuant to sub-regulation (3).

(5) The Authority may by notice issued under section 12 of the Act specify requirements for the purposes of ensuring that sub-regulations (3) and (4) 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.

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**Non-geographic numbers.**

24.(1) A person providing a public telephone network or a publicly available telephone service shall ensure that, where technically and economically feasible, end-users in any Member State are able to access non-geographic numbers in Gibraltar.

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

**Provision of additional facilities.**

25.(1) Subject to sub-regulation (5), the Authority shall ensure that every person providing a public telephone network shall, where technically feasible and economically viable, provide to end-users the 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.

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(6) Without prejudice to regulation 9 (2), the Authority may require all persons of a class or classes specified by the Authority to comply with the requirements set out in Schedule 1, Part A, point (e).

(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.

### **Number portability.**

26.(1) A person providing a publicly available telephone service, including a mobile service, shall ensure that all subscribers to such a service can, if they so request, have access to a number portability facility by virtue of which they can retain their number independently of the person providing the service—

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

This sub-regulation shall not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

(2) The Authority shall, by notice issued under section 12 of the Act, specify obligations for compliance by a person to whom sub-regulation (1) applies for the purpose of ensuring that—

- (a) pricing for such interconnection as may be related to 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 for the use of number portability.

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) 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.

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**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.

(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—

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- (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 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;

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- (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 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.

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(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.**

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 users);
- (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.

### **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,

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



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applied or published by that person until such time as it has been approved by the Authority.

(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 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

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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.

(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 names of any person identified under section 40 of the Act as having significant

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market power and of any obligations imposed upon such a person pursuant to these Regulations.

(4) The Authority shall notify to the European Commission any changes in the names or obligations notified pursuant to sub-regulation (3) 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—

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

SCHEDULE 1

Regulations 9(2) and 25

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO  
IN REGULATIONS 9 AND 25

**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 designated universal service providers to consumers free of charge in order that consumers can—

- (i) allow verification and control of the charges incurred in using the public telephone 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 call barring for outgoing calls, free of charge.**

This is a facility whereby a subscriber can, on request to the telephone service provider and free of charge, bar outgoing calls 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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telephone network and use of publicly available telephone services on pre-paid 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 telephone 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 for the use of the public telephone network at fixed locations, 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

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the subject of the disconnection does not incur charges (e.g. "112" calls) shall be permitted.

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**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 telephone network supports 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.



**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.

**SCHEDULE 3**

Regulation 15 (3) (b)

**PRINCIPLES APPLICABLE TO THE PROVISION OF THE  
MINIMUM SET OF LEASED LINES IN ACCORDANCE WITH  
REGULATION 15 (3) (b)**

Note: In accordance with the procedure referred to in regulation 15, provision of the minimum set of leased lines under the conditions established by Directive 92/44/EC shall continue until such time as the Authority determines that there is effective competition in the relevant leased lines market. The relevant conditions established by Directive 92/44/EC are those set out in Regulations 5, 6, 8, 9, 10 and 11 of the Telecommunications (Leased Lines) Regulations 2001 and those regulations shall, notwithstanding section 99 of the Act, continue to apply to the extent necessary under this Schedule.

The Authority shall ensure that provision of the minimum set of leased lines referred to in regulation 15 follows the basic principles of non-discrimination, cost orientation and transparency.

**1. Non discrimination.**

The Authority shall ensure that the persons identified as having significant market power pursuant to regulation 15(2) adhere to the principle of non-discrimination when providing the leased lines referred to in regulation 15. Those persons are to apply similar conditions in similar circumstances to persons providing similar services, and are to provide leased lines to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners, where applicable.

**2. Cost orientation.**

The Authority shall, where appropriate, ensure that tariffs for leased lines referred to in regulation 15 follow the basic principles of cost orientation. To this end, the Authority is to ensure that persons identified as having significant market power pursuant to regulation 15(2) formulate and put in practice a suitable cost accounting system. The Authority shall keep available, with an adequate level of detail, information on the cost accounting systems applied by such persons. It shall submit this information to the European Commission upon its request.

**3. Transparency.**

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The Authority shall ensure that the following information in respect of the minimum set of leased lines referred to in regulation 15 is published in an easily accessible form.

3.1. Technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point.

3.2. Tariffs, including the initial connection charges, the periodic rental charges and other charges. Where tariffs are differentiated, this must be indicated. Where, in response to a particular request, a person identified as having significant market power pursuant to regulation 15(2) considers it unreasonable to provide a leased line in the minimum set under its published tariffs and supply conditions, it must seek the agreement of the Authority to vary those conditions in that case.

3.3. Supply conditions, including at least the following elements:

- information concerning the ordering procedure,
- the typical delivery period, which is the period, counted from the date when the user has made a firm request for a leased line, in which 95% of all leased lines of the same type have been put through to the users.

This period will be established on the basis of the actual delivery periods of leased lines during a recent time interval of reasonable duration. The calculation must not include cases where late delivery periods were requested by users,

- the contractual period, which includes the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept,
- the typical repair time, which is the period, counted from the time when a failure message has been given to the responsible unit within the person identified as having significant market power pursuant to regulation 15(2) up to the moment in which 80 % of all leased lines of the same type have been re-established and in appropriate cases notified to be back in operation to the users. Where different classes of quality of repair are offered for the same type of leased lines, the different typical repair times shall be published,

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- any refund procedure.

In addition where the Authority considers that the achieved performance for the provision of the minimum set of leased lines does not meet users' needs, it may define appropriate targets for the supply conditions listed above.

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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. Publicly available telephone services offered, including—
  - (i) the scope of the publicly available telephone service  
  
description of the publicly available telephone services offered and indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, directory enquiry services, selective call barring, itemised billing, maintenance etc.)
  - (ii) standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes
  - (iii) compensation and refund policies, including specific details of any compensation or refund schemes offered
  - (iv) types of maintenance service offered
  - (v) standard contract conditions, including any minimum contractual period, 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 the facilities and services mentioned in Schedule 1.

SCHEDULE 5

QUALITY OF SERVICE PARAMETERS

Regulations 10 (2) and 18 (6)

**Supply-time and quality-of-service parameters, definitions and measurement methods referred to Regulations 10 (2) and 18 (6)**

Parameter (1)	Definition	Measurement method
Supply time for initial connection	ETSI EG 201 769-1	ETSI EG 201 769-1
Fault rate per access line	ETSI EG 201 769-1	ETSI EG 201 769-1
Fault repair time	ETSI EG 201 769-1	ETSI EG 201 769-1
Unsuccessful call ratio (2)	ETSI EG 201 769-1	ETSI EG 201 769-1
Call set up time (2)	ETSI EG 201 769-1	ETSI EG 201 769-1
Response times for operator services	ETSI EG 201 769-1	ETSI EG 201 769-1
Response times for directory enquiry services	ETSI EG 201 769-1	ETSI EG 201 769-1
Proportion of coin and card operated public pay telephones in working order	ETSI EG 201 769-1	ETSI EG 201 769-1
Bill correctness complaints	ETSI EG 201 769-1	ETSI EG 201 769-1

(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).

(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

*Note:* Version number of ETSI EG 201 769-1 is 1.1.1 (April 2000)