

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**  
No. 3851 of 26 May, 2011

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LEGAL NOTICE NO. 72 OF 2011.

**COMMUNICATIONS ACT 2006**

**COMMUNICATIONS (UNIVERSAL SERVICE AND USERS'  
RIGHTS) (AMENDMENT) REGULATIONS 2011**

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 Article 1 of Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, I hereby make the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Communications (Universal Service and Users' Rights) (Amendment) Regulations 2011 and come into operation on the day of publication.

**Amendments to the Communications (Universal Service and Users' Rights) Regulations 2006.**

2. The Communications (Universal Service and Users' Rights) Regulations 2006 (the Principal Regulations) are amended in accordance with regulations 3 to 31.

**Amendment to Regulation 2.**

3. Regulation 2 of the Principal Regulations is amended—

- (a) by substituting the words “2. In these Regulations” for the words “2(1) In these Regulations”; and
- (b) by inserting the words “ from the Gibraltar Numbering Plan” after the words “telephone number” in the definition of “non-geographic number”; and

- (c) by substituting a full-stop for the semicolon at end of the definition “non-geographic number”.

**Substitution of regulation 3.**

4. The Principal Regulations are amended by substituting the following regulation for regulation 3–

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

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

**Amendments to regulation 4.**

5. Regulation 4 of the Principal Regulations is amended by substituting the following sub-regulations for sub-regulation (3) and (4)—

- “(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
- (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.”.

**Amendments to regulation 5.**

6. Regulation 5 of the Principal Regulations is amended by substituting the following heading and sub-regulations and for the heading and sub-regulation (1)–

**“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.”.

**Substitution of regulation 6.**

7. The Principal Regulations are amended by substituting the following regulation for regulation 6–

**“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).”.

**Amendments to regulation 7.**

8. Regulation 7 of the Principal Regulations is amended by inserting the following sub-regulations after sub-regulation (7)–

- “(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.

(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.”.

**Amendments to regulation 8.**

9. Regulation 8 of the Principal Regulations is amended–

(a) by substituting the following sub-regulation for sub-regulation (1)–

“(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.”; and

(b) by substituting the following paragraph for paragraph (a) in sub-regulation (2)–

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

**Amendment to regulation 10.**

10. Regulation 10 of the Principal Regulations is amended in sub-regulation (7) by deleting the words “ with respect to any universal service obligation imposed on him” after the words “service provider”.

**Amendment to the heading of Part II.**

11. The Principal Regulations are amended in Heading of Part II by substituting “SPECIFIC RETAIL MARKETS” for “A RELEVANT MARKET”.

**Repeal of regulation 13.**

12. Regulation 13 of the Principal Regulations is repealed.

**Amendments to regulation 14.**

13. Regulation 14 of the Principal Regulations is amended–

- (a) by substituting the following and sub-regulation for the heading and sub-regulation (1)–

**“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 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.”; and

- (b) by deleting sub-regulation (10).

**Repeal of regulations 15 and 16.**

14. Regulations 15 and 16 of the Principal Regulations are repealed.

**Amendments to regulation 17.**

15. Regulation 17 of the Principal Regulations is amended by substituting the following sub-regulations for sub-regulations (1) to (4)–

“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–
  - (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,
  - (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).”.

**Substitution of regulations 18 and 19.**

16. The Principal Regulations are amended by substituting the following regulations for regulations 18 and 19—

**“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).

- (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;
- (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.

(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 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.”.

**Amendment to regulation 20.**

17. Regulation 20(2) of the Principal Regulations is amended by inserting the word “conventional” after the words “reception of” in sub-regulation (2).

**Substitution of regulation 21.**

18. The Principal Regulations are amended by substituting the following regulation for regulation 21–

**“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–
  - (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.”.

**Substitution of regulation 22.**

19. The Principal Regulations are amended by substituting the following regulation for regulation 22–

**“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, 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.
- (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.”.

**Amendments to regulation 23.**

20. Regulation 23 of the Principal Regulations is amended–

- (a) by deleting the words “of publicly available telephone services” in sub-regulation (2)(b);

- (b) by substituting the word “publicly available telephone services shall convey all calls” for the words “a public telephone network shall convey all the calls originating on or transiting through his network” in sub-regulation (3);
- (c) by deleting sub-regulation (4); and
- (d) by substituting the words “sub-regulation (3)” for the words “sub-regulations (3) and (4)”.

**Insertion of regulation 23A.**

21. The principal Regulations are amended by inserting the following regulation after regulation 23–

**“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 2007/116/EC<sup>1</sup> 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”.

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<sup>1</sup> OJ L 49, 17.2.2007, p30.

**Substitution of regulation 24.**

22. The Principal Regulations are amended by substituting the following regulation for regulation 24–

**“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.
- (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.”.

**Amendments to regulation 25.**

23. Regulation 25 of the Principal Regulations is amended–

- (a) by substituting the following sub-regulation for sub-regulation (1)–

“(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.”; and

- (b) by deleting sub-regulation (6).

**Substitution of regulation 26.**

24. The Principal Regulations are amended by substituting the following regulation for regulation 26–

**“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.
- (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.”.

**Amendments to regulation 27.**

25. Regulation 27 of the Principal Regulations is amended–

- (a) by inserting the following sub-regulation after sub-regulation (1)–
  - “(1A) The services referred to in sub-regulation (1) shall include accessibility services to enable appropriate access for disabled end-users.”; and
- (b) by inserting the words “, and in any case by 25 May 2012,” in sub-regulation (7).

**Amendments to regulation 28.**

26. Regulation 28 of the Principal Regulations is amended–

- (a) by substituting the word “consumers” for the word “users” in sub-regulation (1)(b);
- (b) by substituting the following sub-regulation for sub-regulation (3)–

“(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.”.

**Amendment to regulation 29.**

27. Regulation 29 of the Principal Regulations is amended in sub-regulation (7) by inserting the words “and non-discriminatory” after the words “a transparent”.

**Amendments to regulation 30.**

28. Regulation 30 of the Principal Regulations is amended by substituting the following sub-regulations for sub-regulations (3) and (4)–

- “(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).
- (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.”.

**Substitution of Schedule 1.**

29. The Principal Regulations are amended by substituting the following Schedule for Schedule 1–



**“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 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.

**(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.

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

**Repeal of Schedule 3.**

30. The Principal Regulations are amended by repealing Schedule 3.

**Substitution of Schedules 4 and 5.**

31. The Principal Regulations are amended by substituting the following Schedules for Schedules 4 and 5–

**“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.

**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).

(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.”.

Dated 26th May, 2011.

F J VINET,  
Minister with responsibility for communications.

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**EXPLANATORY MEMORANDUM**

These Regulations transpose into the law of Gibraltar Article 1 of Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services.

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