



**Ministry for Transport, Maritime Affairs and Telecommunications
Government of Montenegro**

Supported by



Draft Universal Service Decree

26 January 2010

Submitted by



**375 Palmerston Blvd.
Toronto, Canada M6G 2N5
Attention: William Burnfield, Principal
Tel.: (+1 416) 968-2194 Fax: (+1 416) 968-1147
Email: wburnfield@greatvillage.com**

Submitted to

Ministry for Transport, Maritime Affairs and Telecommunications Rimski trg 46, 81 000 Podgorica Montenegro	European Bank for Reconstruction and Development One Exchange Square London United Kingdom EC2A 2JN
---	--

Montenegro
Ministry for Transport, Maritime Affairs and Telecommunications
Development of Secondary Legislation (Regulations for Universal Service)

DRAFT
Decree on Minimum Set of Services within the Scope of Universal Service

In accordance with Article 4, Paragraph 1, Point 5 of the Law on Electronic Communications (“Official Gazette of Montenegro”, no 50/08, 53/09 and 70/09), the Government of Montenegro, adopted on its session held on _____, the following:

**DECREE ON MINIMUM SET OF SERVICES WITHIN THE SCOPE OF
UNIVERSAL SERVICE**

Subject of the Decree

Article 1

This Decree determines the minimum set of services of specified quality within the scope of Universal service, accessible to all end users, by respecting the rights and freedoms of individuals, without disrupting competition.

Meaning of Terms

Article 2

If not otherwise prescribed explicitly in this Decree, the terms used in the Decree shall have the same meaning as the terms used in the Law on Electronic Communications (“Official Gazette of Montenegro”, no 50/08, 53/09 and 70/09).

Any reference in this Decree to a term in singular (e.g. Universal Service operator) shall also include reference to such term in plural (e.g. Universal Service operators), unless otherwise explicitly prescribed.

Services within the Scope of Universal Service

Article 3

The scope of Universal Service includes services related to:

- 1) Fulfilment of any reasonable request by a user for connection to the public telephone network of at least one operator at a fixed location, which enables the use of publicly available telephone services;
- 2) Provision of the ability to a user to make local, intercity and international calls, transfer of communications via telefax and data transfer at a speed suitable for functional internet access, taking into consideration prevailing technologies used by the majority of users and technological feasibility;
- 3) Provision of the service of Universal Telephone Directory and a Universal Directory Enquiry Service which provides information to users, on all subscribers except those

- who request that their data not be published in the Universal Telephone Directory, in accordance with the law regulating protection of personal data;
- 4) Provision of public telephone booth services or provision of access points for all public telephones, including the fulfilment of reasonable end users' needs regarding geographical coverage, number of telephones or access points, accessibility to persons with special needs and quality of service, as well as the provision of free emergency calls, the provision of calls to other numbers used by other emergency services and the provision of free calls to numbers for certain harmonised services of social significance;
 - 5) Ensuring certain benefits for users with special needs (disabled end-users, enabling them to have adequate access to publicly available telephony services and their use, including access to services for emergency calls, public pay phones, directory and directory enquiry service. For users with special needs, including elderly persons, special terminals shall be provided, depending on nature of their special needs.
 - 6) Ensuring free calls, from all the access points on the public telephone network at fixed locations and from all mobile access points, to the number 112, being the number for emergency calls, to any other numbers used by emergency services, as well as to harmonised numbers for certain harmonised services of social significance, which start with the number 116. This service shall be provided regardless of the technology used to enable the calls.
 - 7) Ensuring that the data on the location from which calls are made to numbers referred to in article 3 (6) are available free of charge to authorities processing these calls immediately upon the call being connected to the emergency service or other harmonized service of social significance, regardless of the technology used.

The geographical scope of Universal Service is the territory of Montenegro.

A reasonable request by a user is a written and legally binding order for a connection to the public telephone network of at least one operator.

This Decree neither specifically mandates nor prohibits conditions imposed by Universal Service operators, in accordance with the law, limiting end-users' access to and/or use of services and applications, but lays down an obligation to Universal Service operators to provide information regarding such conditions. In case of implementation of any measures regarding end-users' access to and/or use of services and applications, both Universal Service operators and competent governmental authorities shall take full account of the policy goal of furthering the development of the information society within the Montenegro, and shall respect the fundamental rights of citizens, including in relation to privacy and due process.

Connection to a Public Telephone Network at a Fixed Location

Article 4

The following services represent the minimum set of services that shall be provided by the operator that is designated, in accordance with the law, as the operator that shall fulfil any reasonable request by a user for connection to the public telephone network at a fixed location which enables the use of publicly available telephone services:

- 1) Provision of a connection to the public telephone network, upon reasonable request by a user, within the user's premises, household or business office at a fixed location.

- Any technology can be used to provide the connection to the public telephone network at a fixed location.
- 2) Enabling use of publicly available telephone service, including all types of calls, by providing a minimum of one line.

Minimum Internet Speed.

Article 5

The operator that is designated, in accordance with the law, as the operator that shall provide functional internet access shall ensure a a minimum bandwidth of 256 kbit/s for upload and 1024 kbit/s for download.

Universal Telephone Directory and Universal Directory Enquiry Service

Article 6

The operator that is designated, in accordance with the law, as the Universal Telephone Directory operator, shall ensure that the following information is included in the Universal Telephone Directory for all users, except those who do not request that their data not be published in the Universal Telephone Directory, under conditions specified in a special regulation on protection of personal data:

- 1) Name and surname of the subscriber or title of the company and its organizational form
- 2) Telephone number of the subscriber
- 3) Address of the subscriber

The Universal Telephone Directory operator shall ensure that a sufficient number of copies of the Universal Telephone Directory is printed such that each public telephone booth in Montenegro may have a copy thereof.

The following services represent the minimum set of services that shall be provided by the operator that is designated, in accordance with the law, as the Universal Directory Enquiry Service operator:

- 1) The Universal Directory Enquiry Service shall, upon the request of the user, provide the telephone number of a subscriber based on the name and address of the subscriber. The Universal Directory Enquiry Service operator shall ensure that this service can be accessed by all subscribers in Montenegro (including subscribers from other operators).
- 2) The Universal Directory Enquiry Service shall be available 24 hours a day and 7 days a week.
- 3) The Universal Directory Enquiry Service shall be available in the language in official use in Montenegro, whereas for international enquiries, this Service shall also be available in English language.
- 4) The Universal Directory shall be available on the Internet for all users, including persons with special needs.

Operators other than the Universal Directory Enquiry Service operator shall deliver to the Universal Directory Enquiry Service operator their relevant subscriber data in an electronic format agreed among the operators.

Public Telephone Booths

Article 7

The Operator that is designated, in accordance with the law, as the public telephone booth operator shall provide access to public telephone booths and guarantee that there will be reasonable coverage of public telephone booths, regardless of the technology, across the entire territory of Montenegro. The location of telephone booths shall, as a rule, be in places with high frequency of use (e.g. near main squares, train stations, airports, hospitals, etc.) and in all places where universal postal services are provided, in accordance with the law regulating postal services.

The following services represent the minimum set of services that shall be provided by the operator that is designated, in accordance with the law, as the public telephone booths operator:

- 1) The public telephone booth operator shall ensure that all public telephone booths are accessible 24 hours a day and 7 days a week.
- 2) The public telephone booth operator shall ensure that a telephone booth accepts coins, credit cards and/or phone cards. If phone cards are used, the public telephone booth operator shall take measures to guarantee a high level of availability of phone cards, so that users may obtain the cards easily.
- 3) The public telephone booth operator shall ensure that any telephone booth that has been damaged or destroyed is promptly repaired.

Benefits for Users with Special Needs (Disabled End Users)

Article 8

The operator that is designated, in accordance with the law, as the public telephone booth operator shall ensure the following benefits are available to users with special needs:

- 1) All public telephone booths keyboards, in addition to having the usual numeration, shall include Braille symbols, permitting the use of public telephone booths by blind people.
- 2) In each location where public telephone booths are provided as required in Article 7 at least one public telephone booth shall be constructed in such a way as to permit the use of the booths by people in wheelchairs, shall be open, shall not have a door and shall have telephone terminals installed at a height permitting use by people in wheelchairs.
- 3) If the use of a public telephone booth is based on a mobile network, SMS (short message system) functionality should also be implemented, in order to permit deaf people to use the public telephone booth for SMS.

Reporting on the Development of Universal Service and Amendments to the Decree

Article 9

The Universal service operator shall deliver an annual report on the services, development and main issues with respect to the provision of Universal Service to the Agency for Electronic Communications and Postal Services (hereafter the “**Agency**”), prior to 31 March of each calendar year. The Agency shall submit the reports of the Universal Service operator to the Ministry for Transport, Maritime Affairs and Telecommunications (hereafter “**Ministry**”). Depending on the findings of the reports and independent reviews of the Agency, the Agency may propose to the Ministry changes to the scope of Universal Service.

When an undertaking designated as a Universal Service operator intends to dispose of a substantial part or all of its local access network assets or subcontract provision of services falling within the scope of Universal Service to a another person or separate legal entity under different ownership, it shall notify the Agency in advance in a timely manner, but in any case not later than 15 days in advance, in order to allow the Agency to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services.

The Government may, upon the proposal of the Ministry, decide to change the scope of Universal Service, and adopt a new Decree, or amendments to this Decree, within intervals defined by the law.

Quality of Universal Service

Article 10

The parameters for the quality of Universal Service, their limit values, methods of measurement of quality, as well as the content, form and manner of publishing data on the quality of Universal Service, are determined by special regulations of the Ministry.

The Agency shall, upon the Ministry’s request, request that providers of publicly available electronic communication networks and services publish comparable, adequate and updated information on the quality of their services and on measures undertaken in order to ensure equality of access to persons with special needs. This information shall be delivered to the Agency, before their publication.

Affordability of Universal Service

Article 11

The Ministry shall determine, with the consent of the ministry responsible for social affairs, categories of users that are considered to be persons with low incomes and persons with disability, by taking into consideration definitions already stipulated in regulations relevant for social welfare and for the status of persons with disability, as well as by introducing additional definitions, if required in order to ensure widest possible availability of Universal Service to users. The Agency shall by a separate regulation determine the method of assessing affordability of prices for Universal Service and determine special packages and price ceilings for services which fall within the scope of Universal Service which shall be provided to persons with low incomes and persons with special needs (disabled persons).

Costs and Funding of Universal Service

Article 12

The Agency shall, by the a separate regulation, determine the methodology for determining net costs incurred by the Universal service operator in providing Universal service.

The Agency shall, by the a separate regulation, define in detail the content, form and manner, in which the Universal Service operator shall report to the Agency regarding the calculation of its costs and on other issues relevant to the provision of Universal Service.

The Agency shall, by a separate regulation, determine the amount of the contribution of operators of electronic communications to finance the provision of Universal service, as well as the manner of payment of these contributions, and other details related to the financing of the provision of Universal Service, in accordance with the law.

Tender Procedure for Determining Universal Service Operator

Article 13

The Agency shall, by a separate regulation, define in detail the criteria to be used to determine the Universal Service operator using a tender process and shall regulate in detail the manner of conducting the tender process, in accordance with the law.

Deadline for Providing Minimum Set of Services within the Scope of Universal Service

Article 14

The Universal Service operator shall provide the minimum set of services defined in this Decree commencing from the date determined by the Agency, and shall provide these services for a 5 year period. The date determined by the Agency, in accordance with this paragraph, shall not be earlier than 1 January 2011

Transitional and Final Provisions

Article 15

This Decree comes into force on the eighth day after publication of the Decree in the Official Gazette of Montenegro.

Number _____
Podgorica, on _____

Government of Montenegro
Prime Minister
Milo Djukanovic

EXPLANATION

1. Legal Ground

The Legal basis for adopting the Decree on Minimum Set of Services within the Scope of Universal Service is prescribed by the following provisions:

- Article 100, Point 3 of the Constitution of Montenegro (“Official Gazette of Montenegro”, no 01/07) setting forth the authority of the Government to adopt decrees, decisions and other regulations for implementation of the laws;
- Article 4, Paragraph 1, Point 5 of the Law on Electronic Communications (“Official Gazette of Montenegro”, no 50/08, 53/09 and 70/09), prescribing that the Government shall periodically determine the minimum set of services falling within the scope of Universal service;
- Article 18 of the Decree on Government (“Official Gazette of Montenegro”, no 80/08) prescribing that, by adopting decrees, the Government defines more closely relations regulated by the law. By adopting the Decree on Minimum Set of Services within the Scope of Universal Service, the Government defines more closely the Scope of Universal Service, which is defined in a general manner in the Law on Electronic Communication.

2. Reasons for Enactment

The Government enacts this Decree, in order to fulfil its obligations under Article 4, Paragraph 1, Point 5 of the Law on Electronic Communications, and in order to achieve European Union standards regarding the provision of services within the scope of universal service, and to comply with the European Union regulatory framework regulating this area.

By adopting the Decree on Minimum Set of Services within the Scope of Universal Service, the Government shall provide conditions for the implementation of provisions of the Law on Electronic Communications, in order to enable the availability, affordability and accessibility of electronic communications services falling within the scope of Universal Service to citizens of Montenegro, in accordance with the Law and this Decree.

3. Explanation of Certain Provisions of the Decree

The provisions of the Decree have the following meaning and purpose:

- Article 1 of the Decree defines the subject of the Decree.
- Article 2 explains the meaning of terms used in the Decree, and refers to definitions of terms used in the Law on Electronic Communications.
- Article 3 lists the services falling within the scope of Universal Service. This article defines in greater detail the services already prescribed by the Law, and extends the scope of Universal Service prescribed by the Law, by introducing the services related to enabling free calls to emergency services and to enabling certain features required for the proper functioning of emergency services. This article also regulates the geographical scope of Universal Service.
- Articles 4-7 define in greater detail the minimum set of services which must be provided by the Universal Service operator(s), and regulates more closely certain

obligations of the operator(s) in connection with the provision of these minimum services.

- Article 8 sets forth the minimum benefits for persons with special needs (disabled persons) that shall be provided by operator that is designated, in accordance with the law, as the public telephone booth operator.
- Article 9 establishes the reporting requirements of the Universal Service operator and the reporting requirements of the Agency, in order to permit the Agency to monitor the development of Universal Service and to initiate procedures to change the scope of Universal Service, if necessary, and allows the Ministry to propose amendments to the Decree, in accordance with Article 52, paragraphs 7 and 8 of the Law on Electronic Communications.
- Articles 10-13 prescribe that other issues relevant to Universal service, i.e. issues related to quality, affordability, cost, funding and tender procedures for determining the Universal Service operator, shall be regulated in more detail by regulations to be adopted by competent authorities.
- Article 14 provides a deadline for Universal Service operators to commence providing the minimum set of services defined under this Decree.
- Article 15 regulates the date of entry into force of this Decree.

4. Preparation of the Decree

The draft Decree was prepared by the Ministry for Transport, Maritime Affairs and Telecommunications, with the assistance of consultants appointed by European Bank for Reconstruction and Development.

In preparing the Decree, the Ministry obtained the opinion of the Ministry of Finance that the Decree does not create business barriers. The opinion of the Ministry of Finance is attached.

The Ministry also consulted with the Agency and with the larger operators of electronic communications in order to identify and discuss optimal solutions for the subject of the Decree.

5. Impact on the Budget

An assessment of the fiscal impact that the implementation of the Decree would have on the budget of the Montenegro, as well as its impact on the resources of the Retirement Disability Fund, Health Insurance Fund, Employment Fund of Montenegro and on the budget of local municipalities is attached to the draft of this Decree.

6. Compliance with EU Regulatory Framework

The Decree is prepared based on Directive 2002/22/EC of the European Parliament and of the Council, on universal service and user's rights relating to electronic communications networks and services, amended by Directive 2009/136/EC (Universal Service Directive), and is fully compliant with this Directive. The Directive is attached to this draft Decree.

Attached to this decree is the completed Form on compliance of the Decree with EU regulatory framework, confirmed by the Ministry for Economic Integration.