COMMUNICATIONS AND MULTIMEDIA ACT 1998

COMMUNICATIONS AND MULTIMEDIA (UNIVERSAL SERVICE PROVISION) (AMENDMENT) REGULATIONS 2008

In exercise of the powers conferred by section 16 and subsections 202(2) and 204(2) of the Communications and Multimedia Act 1998 [Act 588], the Minister makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the Communications and Multimedia (Universal Service Provision) (Amendment) Regulations 2008.

(2) These Regulations come into operation on 1 August 2008.

Amendment of regulation 2

2. The Communications and Multimedia (Universal Service Provision) Regulations 2002 [P.U. (A) 419/2002], which are referred to as “the principal Regulations” in these Regulations, are amended in regulation 2—

(a) in the definition of “gross revenue”, by substituting for the word “received” the word “receivable”;

(b) in the definition of “national penetration rate”, by inserting after the word “national” the word “PSTN”;

(c) in the definition of “area”, by inserting after the words “National Land Code 1965 [Act 56/1965]” the words “and includes a combination of districts or part of a district”;

(d) by inserting after the definition of “gross revenue” the following definition:

‘ national broadband penetration rate” means the percentage of the total number of broadband subscribers in Malaysia divided by the total population as projected based on the latest Malaysian Population and Housing Census conducted by the Statistics Department;’;

(e) by substituting for the definition of “underserved area” the following definition:

‘ underserved area” means—

(a) in relation to PSTN services, any area where the penetration rate for PSTN subscribers in Malaysia is twenty per cent below the national PSTN penetration rate or where the PSTN services are not sufficiently available as provided under regulation 3A;
in relation to broadband access services, any area where the penetration rate for broadband subscribers in Malaysia is below the national broadband penetration rate or where broadband access services are not sufficiently available as provided under regulation 3A; or

(c) in relation to public cellular services, any area with a population density of eighty persons per square kilometre or less or where public cellular services are not sufficiently available as provided under regulation 3A;

(f) in the definition of “net USP cost”, by substituting for the words “regulation 12” the words “regulations 12 and 20A”;

(g) in the definition of “universal service provider”, by substituting for the words “regulation 9 or 10” the words “regulation 9, 10 or 36f”;

(h) in the definition of “Internet access service”, by deleting the words “in conjunction with either a dial-up connection or a direct connection”;

(i) by inserting after the definition of “Internet access service” the following definition:

‘“broadband access service” means Internet access delivery to the end user at a minimum speed as specified in paragraphs 5(2)(ba) and 36c(2)(c);’;

(j) by substituting for the definition of “basic telephony service” the following definition:

‘“basic telephony service” means an applications service for the delivery of voice or voice and data communications, and does not include Internet;’; and

(k) in the definition of “universal service plan”, by inserting after the words “regulation 6” the words “or 36c, as the case may be”.

Amendment of regulation 3

3. Regulation 3 of the principal Regulations is amended—

(a) in subregulation (1), by substituting for paragraphs (a) and (b) the following paragraphs:

“(a) the installation of network facilities and the provision of network services; and

(b) the provision of applications services for—

(i) providing collective access to basic telephony service and Internet access service; and

(ii) providing individual access to basic telephony service and Internet access service.”; and
(b) by inserting after subregulation (2), the following subregulations:

“(3) The Commission may combine any number of underserved areas or parts of an underserved area for the provision of network facilities, network services or applications services to meet the universal service provision objectives.

(4) For the purposes of subregulation 3(3), underserved area means any area where in the opinion of the Commission network facilities, network services, applications services, network facilities and network services, are not sufficiently available.”.

New regulation 3a

4. The principal Regulations are amended by inserting after regulation 3 the following regulation:

“Commission may decide

3a. The Commission may decide whether or not PSTN services, broadband access services or public telephony cellular services are sufficiently available in an area based on any criteria as may be determined by the Commission.”.

Amendment of regulation 5

5. Subregulation 5(2) of the principal Regulations is amended—

(a) by inserting after paragraph (b) the following new paragraph:

“(ba) where applicable, the minimum speed for the broadband access services as may be determined by the Commission;”;

(b) in paragraph (g), by deleting the word “and” at the end of the paragraph; and

(c) by inserting after paragraph (g) the following paragraph:

“(ga) the particulars of the criteria of eligibility that the licensees must fulfil before being allowed to register their interest to be designated universal service providers in the universal service targets; and”.

Amendment of regulation 6

6. Subregulation 6(2) of the principal Regulations is amended—

(a) in paragraph (f) by substituting for the words “; and” the words “; if applicable; and”; and

(b) by inserting after paragraph (f) the following paragraph:

“(fa) the arrangement for the sharing of network facilities and network services with other licensees, if any; and”.

Amendment of regulation 12

7. Regulation 12 of the principal Regulations is amended by inserting after subregulation (2) the following subregulation:

“(3) Notwithstanding any payment made under subregulation (1), the designated universal service providers shall comply with regulation 20.”.

Amendment of regulation 16

8. Regulation 16 of the principal Regulations is amended—

(a) in subregulation (6)—

(i) in paragraph (a), by deleting the word “and” at the end of the paragraph; and

(ii) by inserting after paragraph (a) the following paragraph:

“(aa) the designated universal service provider shall not remove any infrastructure and installations in the universal service target unless otherwise notified by the Commission under subregulation 7A; and”;

(b) by inserting after subregulation (7) the following subregulations:

“(7A) The designated universal service provider revoked under subregulation (1) shall, in accordance with a written notification issued by the Commission, remove the infrastructure and installations from the universal service target or deliver the infrastructure and installations in the universal service target to another designated universal service provider, as the case may be.

(7B) Any designated universal service provider who fails to comply with paragraphs 6(a) and 6(aa) and subregulation (7A) commits an offence under these Regulations.”; and

(c) by substituting for subregulation (8), the following subregulation:

“(8) The designated universal service provider revoked under subregulation (1), shall not be paid any cost and expenses incurred as set out in the approved universal service plan unless the designated universal service provider has reimbursed the Commission—

(a) overpaid monies under regulation 21A;

(b) any payments due under paragraph 6(b);

(c) all costs incurred in restoring services in the universal service target; and

(d) any other costs duly incurred by the Commission.”.
Amendment of regulation 19

9. Regulation 19 of the principal Regulations is amended—
   (a) in subregulation (2), by substituting for the words “advance payment made pursuant to regulation 12” the words “payment made pursuant to regulations 12 and 20a”;
   (b) by inserting after subregulation (2) the following subregulation:
       “(2a) Where the Commission specifies in the invitation under subregulation 5(2) that only network facilities and network services shall be provided, the payment shall be computed as avoidable cost as specified in Table AA of the Schedule less any payment made under regulation 12.”; and
   (c) by substituting for subregulation (6) with the following subregulation:
       “(6) A universal service target shall be removed from the list of universal service targets when—
       (a) there is no net USP cost to be claimed for that universal service target by a designated universal service provider for three consecutive years; or
       (b) the area is no longer an underserved area as defined in regulation 2.”.

Amendment of regulation 20

10. Regulation 20 of the principal Regulations is amended—
    (a) in subregulation (1), by substituting for the word “The” the words “Notwithstanding any payments made under regulation 12 or 20a, the”; and
    (b) by inserting after subregulation (3) the following subregulation:
       “(4) Any universal service provider who fails to comply with subregulation (1) commits an offence under these Regulations.”.

New regulation 20a

11. The principal Regulations are amended by inserting after regulation 20 the following regulation:

   “Payment of capital costs or operating and maintenance expenses

20a. (1) The Commission may make quarterly payments to the designated universal service provider for capital costs or the operating and maintenance expenses of the universal service provision provided that the designated universal service provider submits its written application for—

   (a) the first quarter ending on 31 March on or before 30 April of the same calendar year;
(b) the second quarter ending on 30 June on or before 31 July of the same calendar year;

(c) the third quarter ending on 30 September on or before 31 October of the same calendar year; or

(d) the fourth quarter ending on 31 December on or before 31 January of the subsequent calendar year.

(2) Notwithstanding any application or payment made under subregulation (1), a designated universal service provider shall comply with regulation 20.”.

New regulation 21A

12. The principal Regulations are amended by inserting after regulation 21 the following regulation:

“Obligation to refund

21A. (1) The Commission may issue a written notice to any designated universal service provider who has received any payment under regulation 12 or 20A, or both, which amount exceeds the cost incurred in implementing the approved universal service plan in a universal service target for a calendar year to refund to the Commission the monies paid in excess on or before any date specified in such notice.

(2) A designated universal service provider who fails to comply with the written notice issued by the Commission under subregulation (1) commits an offence under these Regulations.”.

Amendment of subregulation 24(1)

13. Subregulation 24(1), of the principal Regulations is amended—

(a) by deleting the word “advance”; and

(b) by substituting for the words “regulation 12”, the words “regulations 12 and 20A”.

Amendment of regulation 25

14. Regulation 25 of the principal Regulations is amended—

(a) in paragraph (a), by deleting the word “and” at the end of the paragraph;
(b) in paragraph (b), by substituting for the full-stop at the end of the paragraph the words “; and”; and

(c) by inserting after paragraph (b) the following paragraph:

“(c) refund of monies paid in excess received under regulation 21A.”.

Amendment of regulation 26

15. Regulation 26 of the principal regulations is amended in paragraph (a) by substituting for the words “and 24” the words “20A, 24 and 36j”.

Amendment of regulation 29

16. Regulation 29 of the principal regulations is amended—

(a) in subregulation (1), by substituting for the words “30 April” the words “30 June”;

(b) in subregulation (2)—

(i) by deleting the word “and” at the end of paragraph (a);

(ii) by substituting for the full stop at the end of paragraph (b) the words “; and”; and

(iii) by inserting after paragraph (b) the following paragraph:

“(c) make a declaration certifying that to the best of the licensee’s knowledge and belief, the return gives a true and fair view of the state of affairs of the income, expenditure and cash flow of the licensee for the period ending on 31 December of the previous year.”; and

(c) by substituting for subregulation (3) the following subregulation:

“(3) The return under subregulation (1) shall be accompanied by—

(a) a declaration of a licensed external auditor appointed by the licensee to certify that—

(i) he has been given sufficient access to the licensee’s records to enable him to audit the return;

(ii) he has audited the return; and

(iii) to the best of his knowledge and belief, the return is properly drawn up in accordance with applicable accounting standards in Malaysia and gives a true and fair view of the state of affairs of income, expenditure and cash flow of the licensee for the period ending on 31 December of the previous year; and

(b) such other information as the licensed external auditor referred to in paragraph (a) thinks fit.”.
New Part VI A

17. The principal Regulations are amended by inserting after Part VI the following Part:

PART VI A

MAJOR CONTRIBUTORS

Major contributor

36A. For purposes of this Part, major contributor means any licensee whose contribution to the USP Fund in the previous calendar year under regulation 27 exceeds twenty million ringgit or any other amount as may be determined by the Minister.

Rate of contribution to be utilised towards provision of universal service provider

36B. (1) Any major contributor may be allowed to utilise up to fifty per cent, or any percentage as may be determined by the Minister, of its contribution in a particular calendar year for the purpose of funding its capital costs for the provision of universal service.

(2) No payment for operating and maintenance expenses shall be made for the provision of universal service under this Part.

Obligation of major contributor to submit draft of universal service plan

36C. (1) Any major contributor who intends to utilise the contribution as provided under regulation 36B shall submit its draft of the universal service plan on or before 30 September of each calendar year.

(2) The draft of the universal service plan under subregulation 36C (1) shall be submitted in writing together with the following information:

(a) the details of the locations within the universal service target to which the universal service plan applies to;

(b) a detailed description of the network facilities, network services and applications services to be provided within the universal service target;

(c) where applicable, the minimum speed for the broadband access services as may be determined by the Commission;

(d) a detailed description of the technology to be deployed in respect of the universal service target;

(e) the timetable for the implementation of the universal service plan;
In the event a major contributor fails to submit the draft of the universal service plan in accordance with subregulations (1) and (2), this Part shall cease to be applicable in respect of its contribution under regulation 36b.

Matters for consideration for approving draft of universal service plan

36d. (1) The Commission shall consider the following before approving the draft of the universal service plan under regulation 36e:

(a) whether such draft of the universal service plan covers matters requested under subregulation 36c(2);

(b) whether such draft of the universal service plan is efficient and economically practicable;

(c) whether such draft of the universal service plan can be implemented progressively throughout that universal service target within such period as the Commission considers reasonable;

(d) whether such draft of the universal service plan will contribute towards meeting the objectives of universal service provision; and

(e) such other matters as the Commission deems relevant.

(2) The Commission may, at any time before approving the draft of the universal service plan, request the major contributor to provide such further information or other documents within the time specified in the request or any extension of time granted by the Commission.

(3) The Commission shall take into consideration such further information or other documents provided by the major contributor before approving the draft of the universal service plan.

Power of the Commission over draft of universal service plan

36e. (1) The Commission after taking into consideration the draft of the universal service plan submitted by any major contributor, may—

(a) approve the draft of the universal service plan without amendments;
(b) approve the draft of the universal service plan with amendments; or

(c) reject the draft of the universal service plan.

(2) For the purpose of considering the draft of the universal service plan under subregulation (1)(a) or (b), the Commission may, by notice in writing, direct the major contributor to provide any further information and to make any changes to the draft of the universal service plan.

(3) The approved draft of the universal service plan under paragraph (1)(a) or (1)(b) shall constitute an approved universal service plan for the purpose of the implementation of universal service provision.

Notification of approval of universal service plan and designation of major contributor as universal service provider

36e. (1) If the Commission approves the draft of the universal service plan in accordance with paragraph 36e(1)(a) or (b), the Commission shall notify the major contributor in writing of its decision and shall designate the licensee as the designated universal service provider for the universal service target.

(2) The notification and designation under subregulation (1) shall include the following:

(a) the commencement date for the implementation of the approved universal service plan;

(b) the approved universal service plan including the costs and expenses which would be paid from the USP Fund;

(c) the schedule for payment and the timeline for completion of the deliverables;

(d) the completion date for the implementation of the approved universal service plan;

(e) the final date for the submission of claims; and

(f) such other matters as the Commission considers relevant.

Utilisation of contribution of major contributor

36g. If any universal service plan approved under regulation 36e does not fully utilise the contribution specified under subregulation 36e(1), any surplus of the contribution not utilised shall be used for the implementation of the approved universal service plans under regulation 8.
Separate account for implementation of universal service plan

36h. The Commission may require the major contributor to maintain a separate account for the implementation of the universal service plan.

Claims for payment by major contributor

36i. (1) The designated universal service provider shall submit a written claim to the Commission for the capital cost of universal service provision in a particular universal service target for the implementation of universal service.

(2) A claim for payment under subregulation (1) shall be in accordance with the provisions of payment in the approved universal service plan and shall be accompanied by any such document which the Commission may require.

(3) If no claim is made on or before the final date for the submission of claims as stipulated in the notification under subregulation 36f(2), no payment shall be due or payable to the designated universal service provider in respect of the implementation of the approved universal service plan.

Commission to verify claim for payment

36j. (1) The Commission shall verify any claim made by a designated universal service provider before payment is made from the USP Fund.

(2) The Commission may, at any time, for the purposes of verifying a claim under subregulation (1), request the designated universal service provider to provide any further information or other documents within the time specified in the request or any extension of time granted by the Commission.

(3) The Commission shall take into consideration such further information or other documents provided by the designated universal service provider in verifying the claim.

(4) If such further information or other documents required under subregulation (2) is not provided by the designated universal service provider within the time specified in the request or any extension of time granted by the Commission, the Commission may verify the claim and the verification of the Commission shall be final.

Payment of claim to major contributors

36k. (1) Payment for the capital costs incurred in implementing the approved universal service plan pursuant to regulation 36i in a universal service target shall be made upon a duly verified claim under regulation 36i not later than thirty days from the date the verification is completed by the Commission.
(2) Notwithstanding subregulation (1), the Commission may, in its absolute discretion, make interim payment of any amount claimed pending the verification of the claim.

**Overstatement of claim**

36L. (1) If the Commission finds that a designated universal service provider has overstated its claim in respect of the cost incurred in implementing the approved universal service plan in a universal service target for a calendar year, the Commission may, by a written notice to the designated universal service provider—

(a) state the Commission’s findings; and

(b) request the designated universal service provider to explain in writing the overstatement within a specified period of time.

(2) If the explanation as requested under paragraph (1)(b) is not provided by the designated universal service provider within the time specified in the request or any extension of time granted by the Commission, the Commission may make a decision on the claim of and the decision of the Commission shall be final.

(3) The Commission shall, before making a decision under subregulation (2), consider the following:

(a) the explanation provided by the designated universal service provider, if any;

(b) whether the designated universal service provider acted in good faith; and

(c) such other matters as the Commission may deem relevant.

(4) If the Commission decides that the designated universal service provider has overstated its claim for a calendar year, the Commission shall have the right to estimate the designated universal service provider’s claim for that calendar year and the estimation of the Commission shall be final.

(5) Notwithstanding subregulations (2) and (4), a designated universal service provider who intentionally overstates a claim or makes a claim for which the cost is not incurred in implementing the approved universal service plan in a universal service target commits an offence under these Regulations.
Non-application

36m. Regulation 12 and Part V shall not be applicable to this Part.”.

Amendment of Schedule

18. The Schedule to the principal Regulations is amended—

(a) by substituting Table A with the following Table:

"TABLE A

(Regulation 19)

CALCULATION OF NET COST OF UNIVERSAL SERVICE PROVISION

<table>
<thead>
<tr>
<th>Avoidable cost</th>
<th>Less revenue foregone</th>
<th>Net universal service provision cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>Item</td>
<td>RM</td>
<td>Item</td>
</tr>
</tbody>
</table>
1. Annualised incremental cost of capital depreciated over the operational lifetime of the following equipment used for providing service in the universal service target: | 1. Annual revenue derived from the universal service target: | | |
   • Switching                                                                  | • Connection fee      | |
   • Access                                                                     | • Rental on exchange line |
   • End-user                                                                   | • Call charges (including Internet dail-up) |
   • Links                                                                      | • Interconnection costs received from other network facilities and/or network service provider |
   • Civil infrastructure                                                       | • Call revenues derived from calls terminating at the universal service target |
   • Other capital expenditure                                                  | • Other services (additional services) |
   • Minor capital expenditure                                                 |
<table>
<thead>
<tr>
<th>Avoidable cost</th>
<th>Less revenue foregone</th>
<th>Net universal service provision cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td><strong>Item</strong></td>
<td><strong>Item</strong></td>
<td><strong>Item</strong></td>
</tr>
<tr>
<td>Expenditure for creating Internet portals and/or websites for centres providing collective access to Internet services</td>
<td>Revenue from the provision of collective access</td>
<td></td>
</tr>
<tr>
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<td>• Revenue from the provision of collective access</td>
<td></td>
</tr>
<tr>
<td>2. Plus annual operating and maintenance expenses incurred for providing services in the universal service target:</td>
<td>2. Plus annual revenue derived from other sources including:</td>
<td></td>
</tr>
<tr>
<td>• Network and service maintenance</td>
<td>• Revenues from services to other licensees and customers (Government agencies, etc.)</td>
<td></td>
</tr>
<tr>
<td>• Civil infrastructure leases</td>
<td>• Revenues from sharing of infrastructure with other licensees (mast, sites, buildings, etc.)</td>
<td></td>
</tr>
<tr>
<td>• Interconnection payment to other network facilities provider and/or network service provider</td>
<td>• Service payment to other network facilities provider and/or network service provider</td>
<td></td>
</tr>
<tr>
<td>• Service payment to other network facilities provider and/or network service provider</td>
<td>• Spectrum fee</td>
<td></td>
</tr>
<tr>
<td>• Spectrum fee</td>
<td>• Operator assistance services (operator’s calls, emergency calls, directory calls)</td>
<td></td>
</tr>
<tr>
<td>• Customer care and billing</td>
<td>• Bad debt provision</td>
<td></td>
</tr>
<tr>
<td>• Bad debt provision</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(b) by inserting after Table A the following Table:

"TABLE AA
(Regulation 19(2)(a))

CALCULATION OF NET COST OF UNIVERSAL SERVICE PROVISION

<table>
<thead>
<tr>
<th>Avoidable Cost</th>
<th>Item</th>
<th>RM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Capital cost of the following equipment and services used for providing service in the universal service target:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Switching</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Access</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Links</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Avoidable Cost

<table>
<thead>
<tr>
<th>Item</th>
<th>RM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil infrastructure</td>
<td></td>
</tr>
<tr>
<td>Other capital expenditure</td>
<td></td>
</tr>
<tr>
<td>Minor capital expenditure</td>
<td></td>
</tr>
</tbody>
</table>

Made 8 July 2008

[KTAK: BP(5)353/1/3; PN(PU²)601/VII]

Dato' Shaziman bin Abu Mansor

Menteri Tenaga, Air dan Komunikasi