

P.U. (A) 402.

COMMUNICATIONS AND MULTIMEDIA ACT 1998

COMMUNICATIONS AND MULTIMEDIA (UNIVERSAL SERVICE PROVISION) „
(AMENDMENT) REGULATIONS 2003

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 2003**.

(2) These Regulations come into operation on 1 November 2003.

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) by inserting before the definition of “weightage factor” the following definitions:

“minimum revenue threshold” means—

(a) up to 31 December 2003, a minimum amount of five hundred thousand ringgit; and

(b) from 1 January 2004, a minimum amount of two million ringgit;

“individual access” means access to applications services by any person in a universal service target and for which such person would be responsible for all charges including rental;

“collective access” means access to applications services by members of the community in a universal service target and for which the members of the community do not pay any rental or other charges other than call charges for telephony and Internet access service

charge;’;

(b) in the definition of “weightage factor”, by inserting after the words “USP Fund” the words “as specified in regulation 28”;

(c) by inserting after the definition of “weightage factor” the following definition:

‘ “net revenue” means gross revenue less outpayment settlements to other licensees such as interconnect charges and in respect of international calls, payment to other foreign network facilities providers, foreign network service providers or foreign applications service providers;’;

(d) by substituting for the definition of “weighted net revenue” the following definition:

‘ “weighted net revenue” means net revenue multiplied by the weightage factor;’;

(e) by inserting after the definition of “weighted net revenue” the following definition:

‘ “gross revenue” means payments received by the licensee for the services provided to the customer less any discounts given;’;

(f) by substituting for the definition of “national penetration rate” the following definition:

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

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

‘ “underserved area” means—

(a) an area where the penetration rate for PSTN subscribers in Malaysia is twenty per cent below the national penetration rate; or

(b) any locality where, in the opinion of the Commission, applications services are not sufficiently available to the community at large;’;

(h) by inserting after the definition of “underserved area” the following definition:

‘ “net USP cost” means the loss incurred, if any, by a universal service provider from providing network facilities, network services or applications services to a universal service target in the course

of implementing the universal service plan and is arrived at by applying the formula of avoidable cost less the revenue foregone and less any advance payment made pursuant to regulation 12;’;

(i) in the definition of “underserved group within the community”, by deleting the words “based on the priorities as set out in regulation 3”;

(j) in the definition of “universal service provider”, by inserting after the words “regulation 9” the words “or 10”;

(k) by inserting after the definition of “universal service provider” the following definition:

‘ “licensee” means any person who—

(a) holds an individual licence; or

(b) undertakes activities which are subject to a class licence,

but does not include any person who holds only a content applications service provider licence;’;

(l) by inserting after the definition of “audiotext hosting service” the following definition:

‘ “basic telephony service” means an applications service for the delivery of voice and data communications excluding Internet;’;

(m) by deleting the definition of “public payphone service”;

(n) by substituting for the definition of “designated service” the following definition:

‘ “designated service” means any of the services listed in column (1) of Table C of the Schedule;’; and

(o) by inserting after the definition of “designated services” the following definitions:

‘ “individual access point” means a location in the relevant universal service target where individual access is to be provided under a universal service plan;

“collective access point” means a location in the relevant universal service target where collective access is to be provided under a universal service plan;’.

Amendment of regulation 3

3. The principal Regulations are amended by substituting for regulation 3 the following regulation:

“Universal service provision objectives

3. (1) The following are the objectives of the universal service provision:

(a) collective access to basic telephony and Internet access services;

and

(b) individual access to basic telephony and Internet access services.

(2) In the event that the objectives specified in subregulation (1) cannot be met simultaneously in a universal service target, the order of priority for the provision of universal service shall be as follows:

(a) collective access shall have priority over individual access; and

(b) access to basic telephony services shall have priority over Internet access services.”.

Amendment of regulation 4

4. The principal Regulations are amended by substituting for subregulation 4(1) the following subregulation:

“(1) The Commission, subject to the approval of the Minister, shall identify the universal service targets, and shall, from time to time, publish a notification specifying the identified universal service targets and such other matters as the Commission considers relevant.”.

Amendment of regulation 5

5. The principal Regulations are amended by substituting for regulation 5 the following regulation:

“Invitation to submit draft of universal service plan

5. (1) Upon the publication of the notification under subregulation 4(1), the Commission may invite all licensees to register their interest to be a universal service provider in a particular universal service target.

(2) The invitation under subregulation (1) shall contain the following:

(a) specific information concerning the universal service target such as the priority of the universal service objectives, if any, and the demographics of the universal service target;

(b) the number of collective access points or individual access points required to be installed in the universal service target, relevant time frames and other particulars material to the universal service plan to be prepared in relation to that universal service target;

(c) details of the cost components that may be claimed from the USP Fund;

(d) the procedures for registering the licensee’s interest;

(e) the time frame for the licensee to register their interest;

(f) the procedures and other relevant information relating to the submission of the draft of the universal service plan;

- (g) the time frame for the submission of the draft of the universal service plan to the Commission; and
- (h) such other matters as the Commission considers relevant.”.

Amendment of regulation 6

6. Regulation 6 of the principal Regulations is amended—

(a) by substituting for subregulation (1) the following subregulation:

“(1) Any licensees who have registered their interest with the Commission pursuant to the invitation under regulation 5 shall submit their draft of the universal service plans within the time frame specified in the invitation.”; and

(b) in the English language text, in subregulation (2)—

- (i) in paragraph (b), by substituting for the word “detail” the word “detailed”; and
- (ii) in paragraph (c), by substituting for the word “detail” the word “detailed”.

Amendment of regulation 8

7. Regulation 8 of the principal Regulations is amended—

(a) by substituting for subregulation (1) the following subregulation:

“(1) The Commission shall consider the draft of the universal service plan submitted and may, after consideration—

- (a) approve any draft of the universal service plan with amendment;
- (b) approve any draft of the universal service plan without amendment; or
- (c) reject any draft of the universal service plan.”; and

(b) by inserting after subregulation (1) the following subregulation:

“(1A) For the purpose of subregulation (1), the Commission may, by notice in writing, consult the licensee for further information including any changes to the draft of the universal service plan.”.

Amendment of regulation 10

8. The principal Regulations are amended by substituting for regulation 10 the following regulation:

“Mandatory designation of universal service provider by Commission

10. (1) In the event that—

- (a) no licensee registers its interest pursuant to the invitation for a particular universal service target;
- (b) no draft of the universal service plan is submitted within the time stipulated although licensees have registered their interest pursuant to the invitation for a particular universal service target; or
- (c) the Commission rejects all drafts of the universal service plans pursuant to paragraph 8(1)(c),

the Commission shall have the absolute discretion to designate, by giving a notice in writing, any licensee that in the Commission's opinion is appropriate as the designated universal service provider for that universal service target.

(2) The Commission shall consider the needs of the universal service target, the scope of the licence and experience of the licensee before deciding on the appropriate licensee as the designated universal service provider.

(3) Any licensees designated under subregulation (1) shall submit to the Commission a draft of the universal service plan in accordance with subregulation 6(2) within ninety days from the date of such designation.

(4) A designated licensee who fails to comply with subregulation (3) commits an offence under these Regulations.”.

Amendment to regulation 13

9. The principal Regulations are amended by substituting for regulation 13 the following regulation:

“Progress report

13. The designated universal service provider shall, from time to time or upon request by the Commission, submit a report on the progress of the implementation of the approved universal service plan.”.

Amendment of regulation 19

10. Regulation 19 of the principal Regulations is amended—

- (a) in subregulation (1), by substituting for the words “the cost” the words “the net USP cost”;
- (b) in subregulation (2), by substituting for the words “net cost” the words “net USP cost”;
- (c) in subregulation (5), by substituting for the words “this regulation” the words “these Regulations”; and
- (d) by inserting after subregulation (5) the following subregulation:

“(6) A universal service target shall be removed from the list

of universal service targets when there is no net USP cost to be claimed for that universal service target by a designated universal service provider for three consecutive years.”.

Amendment of regulation 22

11. Regulation 22 of the principal Regulations is amended—

(a) by renumbering the existing regulation as subregulation (1) of that regulation; and

(b) by inserting after subregulation (1) the following subregulation:

“(2) Notwithstanding subregulation (1), the Commission may, subject to a written application by the designated universal service provider to be made on or before 28 February of such year, extend the date for the submission of the claim.”.

Amendment of regulation 27

12. Regulation 27 of the principal Regulations is amended—

(a) by substituting for subregulation (1) the following subregulation:

“(1) All licensees shall contribute to the USP Fund except for those licensees whose total net revenue for the previous calendar year derived from the designated services is less than the minimum revenue threshold.”;

(b) by substituting for subregulation (2) the following subregulation:

“(2) A licensee who is required to make contribution under subregulation (1) shall contribute six per cent of its weighted net revenue annually to the USP Fund, unless the Commission with the approval of the Minister, by notice in writing, decides to reduce the contribution to the USP Fund.”; and

(c) by inserting after subregulation (2) the following subregulation:

“(2A) For the purpose of reducing the contribution to the USP Fund, the Commission may make an assessment from time to time of the USP Fund required to fulfill the universal service objectives by taking into consideration the economic performance of the industry, the amount of moneys available in the USP Fund and such other matters as the Commission deems fit and necessary.”.

Amendment of regulation 28

13. The principal Regulations are amended by substituting for regulation 28 the following regulation:

“Weightage factor for the designated services

28. The weightage factor for the designated services—

- (a) up to 31 December 2003, shall be as specified in column (2) of Table C; and
- (b) from 1 January 2004, shall be as specified in column (3) of Table C.”.

Amendment of regulation 29

14. Regulation 29 of the principal Regulations is amended—

(a) by substituting for subregulation (1) the following subregulation:

“(1) All licensees shall submit to the Commission not later than 30 April of each year—

- (a) a certified true copy of their audited accounts for the financial year ending in the previous calendar year; and
- (b) a certified true copy of their respective return of net revenue (referred to as “return” in these Regulations) derived from designated services and non-designated services of the previous calendar year,

in a form specified in Table B of the Schedule.”; and

(b) in subregulation (2), by substituting for paragraph (b) the following paragraph:

“(b) provide a certified true copy of its audited accounts for the previous financial year and the unaudited interim accounts for the period after the end of its financial year up to 31 December.”.

Amendment of Schedule

15. The Schedule to the principal Regulations is amended—

- (a) in Table A, in column (2) of item 1, by substituting for the words “Revenue from public payphone services” the words “Revenue from the provision of collective access”;
- (b) by substituting for Table B the following Table:

“TABLE B
(Regulation 29)

RETURN OF NET REVENUE FORM FOR CALENDAR YEAR 20.....

Licensee:

Category of license:

Financial year:

| No. | <i>Designated services (please specify)</i> | <i>Gross revenue</i> (RM) (a) (2) | <i>Less payment to other network facilities provider or network services provider individual licensee</i> (RM) (b) (3) | <i>Net revenue</i> (RM) (c) = (a) - (b) (4) | <i>Weightage factor</i> (d) (5) | <i>Weighted net revenue</i> (RM) (e) = (c) x (d) (6) |
|-----|---|--|---|--|---|---|
| | Total | | | | | |
| | Non-designated services (please specify) | | | | | |
| | Grand total | | | | | |

”; and

(c) by substituting for Table C the following Table:

“TABLE C

(Regulations 2 and 28)

DESIGNATED SERVICES AND WEIGHTAGE FACTOR

| <i>Designated services</i> (1) | <i>Weightage factor</i> | |
|--|--------------------------------------|-----------------------------------|
| | (2) <i>Up to 31 December 2003</i> | (3) <i>From 1 January 2004</i> |
| Regulated under the Communications and Multimedia (Rates) Rules 2002 | | |
| Local call | 0 | 0 |
| National call | 1 | 0 |
| Rental on exchange lines (residential and business) | 0 | 0 |
| Operator assisted calls | 1 | 0 |
| Directory assistance service | 0 | 0 |
| Connection service | 0 | 0 |
| Reconnection service | 0 | 0 |
| Internet access communications charge | 0 | 0 |
| Internet access charge | 0 | 0 |
| Audiotext hosting service | 1 | 0 |
| Not regulated under the Communications and Multimedia (Rates) Rules 2002 | | |
| International call | 1 | 1 |
| Call termination service provided to foreign network facilities provider, foreign network services provider or foreign applications service provider | 1 | 1 |
| Freephone service | 1 | 1 |
| ISDN | 1 | 1 |
| Cellular mobile service | 0.5 | 1 |

| <i>Designated services</i> (1) | <i>Weightage factor</i> | |
|---|--|---------------------------------------|
| | (2) <i>Up to 31 December 2003</i> | (3) <i>From 1 January 2004</i> |
| International roaming service | 0.5 | 1 |
| IP telephony | 1 | 1 |
| Leased lines | 1 | 1 |
| Such other activities subject to an individual or class licence | 0 | 1 |

Made 20 October 2003
[KTKM(S) 353/146/1 Klt. 11; PN(PU²)601/VI]

DATUK AMAR LEO MOGGIE
Minister of Energy, Communications and Multimedia

Hakcipta Pencetak 

PERCETAKAN NASIONAL MALAYSIA BERHAD

Semua Hak Terpelihara. Tiada mana-mana bahagian jua daripada penerbitan ini boleh diterbitkan semula atau disimpan di dalam bentuk yang boleh diperolehi semula atau disiarkan dalam sebarang bentuk dengan apa jua cara elektronik, mekanikal, fotokopi, rakaman dan/atau sebaliknya tanpa mendapat izin daripada Percetakan Nasional Malaysia Berhad (Pencetak kepada Kerajaan Malaysia yang dilantik).



DICETAK OLEH
PERCETAKAN NASIONAL MALAYSIA BERHAD,
CAWANGAN KUALA LUMPUR
BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA