



COMMUNICATIONS AND MULTIMEDIA ACT 1998

COMMISSION DETERMINATION ON UNIVERSAL SERVICE PROVISION

DETERMINATION No. 6 of 2002

Pursuant to the Ministerial Direction on Universal Service Provision No.1 of 2001 and in exercise of the powers conferred by sections 55, 56 and 202(1) of the Act, the Commission determines as follows:

Citation and Commencement

1. This Determination may be cited as the **Commission Determination on Universal Service Provision, Determination No. 6 of 2002** ("Determination") and shall come into force on 1 January 2004.

Interpretation

2. In this Determination, unless the context otherwise requires -

"area" means a district under the National Land Code;

"avoidable cost" means the cost that could have been avoided if the universal service provider did not provide universal service in the universal service target;

"basic telephony service" means an applications service involving a public circuit switched voice grade interface or any other switch for the delivery of voice and data communications;

"collective access" means access to applications services by the public in a universal service target and for which the universal service provider does not receive from the public any rental and other charges (other than call charges for telephony and internet communication and access charges);

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

"designated services" means all activities subject to either a class licence or individual licence under the Act except for activities subject to a content applications service provider licence or activities under any licence granted under the Broadcasting Act 1988 and registered with the Commission under section 278 of the Act;

"gross revenue" means payments received by the licensee for the services provided to the customer less any discounts offered;

"individual access" means access to applications services by any person in a universal service target and for which that person would be responsible to the applications service provider for all charges including rental;

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

"licensee" means a person who :

- (a) holds an individual licence; or
- (b) undertakes activities which are subject to a class licence; or
- (c) holds a licence under the Telecommunications Act 1950 and registered under section 278 of the Act

but does not include a person who holds only a content applications service provider licence or only a licence issued under the Broadcasting Act 1988 and registered under section 278 of the Act;

"minimum revenue threshold" means Ringgit Malaysia two million only;

"net revenue" means gross revenue less outpayment settlements to other licensees e.g interconnect charges and in respect of international calls, to other foreign network facilities providers, foreign network service providers and/or foreign applications service providers;

"net USP cost" means the loss incurred, if any, by a universal service provider from providing facilities and services to a universal service target in the course of implementing the universal service plan and is arrived at applying the formula of avoidable cost less the revenue foregone;

"revenue foregone" means the revenue that would have been foregone had the universal service provider not provided universal service in the universal service target;

"underserved area" means an area where the penetration rate for basic telephony service is 20% below the national penetration rate for basic telephony service or any locality where, in the opinion of the Commission, applications services are not sufficiently available to the community at large;

"underserved group within the community" means a group of people, linked by similar characteristics from a socio-cultural or economic perspective, within a served area who do not have collective and/or individual access;

"universal service provider" means a licensee designated as such by the Commission in respect of a universal service target and responsible for implementing a universal service plan;

"universal service target" means an underserved area and/or underserved group within the community;

"weightage factor" means the multiplication factor applied to revenue derived from a designated service for calculating the contribution to the USP Fund; and

"weighted net revenue" means net revenue multiplied by the weightage factor.

3. Any term used in this Determination shall, unless expressly defined above or if the context otherwise requires, have the same meaning as in the Act or the regulations made under it.

Universal service objectives

4. The following are the objectives of the system for universal service provision:-
 - a) collective access to basic telephony and internet access services; and
 - b) individual access to basic telephony and internet access services.

5. In the event that the objectives above cannot be met simultaneously in a universal service target, the order of priority for the provision of universal service shall be as follows:
 - a) the provision of collective access shall have priority over individual access; and
 - b) the provision of access to basic telephony shall have priority over internet access services.

Delivery of universal services

6. The Commission shall from time to time publish a notification specifying universal service targets identified by the Commission.

7. The Commission shall, when new universal service targets are identified in the notification, forward an "Invitation to submit a Universal Service Plan" (the "Invitation") to all licensees inviting them to register their interest to act as the universal service provider in a particular universal service target, within the time specified in the Invitation.

8. The Invitation shall contain, amongst others:
 - a) Specific information concerning the universal service target e.g. the priority of the universal service objectives, if any, the demographics of the universal service target and the existing network facilities and network services in the relevant location;
 - b) The number of collective access points and/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 costs that may be claimed from the USP Fund;
 - d) The procedures involved in registering the licensees' interest pursuant to the Invitation and the procedures and other relevant information relating to the submission of the universal service plan; and
 - e) The deadline for the submission of the universal service plan to the Commission.

9. Licensees who have registered their interest with the Commission pursuant to the Invitation shall submit their universal service plans within the deadline specified in the Invitation.

10. The universal service plan submitted shall include:
- a) The implementation plan for the universal service target concerned. The universal service provider is to incorporate the methodology used in estimating the types and extent of collective access required for each area;
 - b) The proposed phases for the installation of the network facilities and/or the provision of network services or applications services;
 - c) The cost of the installation of the network facilities and/or the provision of network services or applications services; and
 - d) Such other matters as may be required in the Invitation.

11. To ensure realistic and accurate submissions, the universal service plan should only be prepared after the licensee has conducted relevant research and survey(s) of the universal service target.

12. In the event

- a) no licensee registers its interest pursuant to the Invitation for a particular universal service target; or
- b) no universal service plan is submitted although licensees registered their interest pursuant to the Invitation for a particular universal service target;

the Commission shall have the right to designate as universal service provider for that universal service target, any licensee that in the Commission's opinion is appropriate. The Commission shall consider the needs of the universal service target and the scope of the licensee's licensed activities and experience before deciding on the appropriate licensee as the universal service provider. The Commission shall give written notice of such designation to the appropriate licensee.

13. The Commission shall consider the universal service plans submitted pursuant to the Invitation and may at anytime before approving the universal service plan, request the relevant licensee to provide such further information or other documents within the time specified in the request or any extension of time granted by the Commission.

14. The Commission may either:

- a) approve a universal service plan whether with or without amendments;
or
- b) reject a universal service plan.

15. In the event that the Commission rejects all universal service plans submitted pursuant to the Invitation in relation to a particular universal service target, the Commission shall have the right to designate as universal service provider for that universal service target, any licensee that in the Commission's opinion is appropriate. The Commission shall consider the needs of the universal service target and the scope of the licensee's licensed activities and experience before deciding on the appropriate licensee as the universal service provider. The Commission shall give written notice of such designation to the appropriate licensee.

16. Licensees designated as universal service provider under paragraphs 12 and 15 shall submit to the Commission a universal service plan for approval within 90 days from the date of such designation.

17. The Commission shall consider the universal service plans submitted and may, by notice in writing consult the universal service provider concerned regarding changes to the universal service plan before approving it without amendments or with amendments which in the Commission's opinion are reasonable.

18. A universal service provider shall comply with the approved universal service plan and shall on a periodic basis and/or as required by the Commission, submit a report on the progress of the implementation of the approved universal service plan. For avoidance of doubt, all network facilities and network services provided pursuant to an approved universal service plan shall be owned by the relevant network facilities provider or network service provider, as the case may be.

19. The Commission may, by giving the universal service provider a written notice, require that an approved universal service plan be varied in accordance with the terms set out in the notice. The universal service provider shall then submit to the Commission a draft of the varied universal service plan. The Commission may, by notice in writing consult the universal service provider concerned before finalising the variation to the approved universal service plan.

Removal of designation of universal service target

20. A universal service target will be removed from the list of universal service targets when there is no net USP cost to be claimed for that target by a universal service provider for three consecutive years.

Contribution to the Universal Service Provision Fund

21. All licensees, except for those whose total net revenue derived from designated services is less than the minimum revenue threshold, shall contribute to the USP Fund.

22. All network facilities, network services and applications services regulated under the Communications and Multimedia (Rates) Rules 2002 shall have the weightage factor of 0. All other designated services shall have the weightage factor of 1.

23. A licensee who is required to contribute to the USP Fund shall pay annually 6% of its weighted net revenue (the "Contribution") to the USP Fund unless the Commission by notification in writing decides to reduce the Contribution based on the Commission's assessment from time to time of the funds required to fulfil the universal service objectives, the economic performance of the industry, the amount of moneys available in the USP Fund and such other matters as may be relevant.

24. All licensees shall submit a certified true copy of their respective return of revenues derived from designated services of the previous calendar year not later than 30 April of each calendar year in a form specified by the Commission.

25. Where the licensee's financial year ends on a day other than on 31 December, the licensee shall:

- a) state its financial year: and

- b) provide a revenue statement comprising audited accounts of its previous financial year and unaudited interim accounts for the period after the end of its financial year up to 31 December.

26. The return under paragraphs 24 and 25 shall be accompanied by a declaration of a licensed external auditor appointed by the licensee to certify that:

- a) he has been given sufficient access to the licensee's records to enable him to audit the return;
- b) he has audited the return; and
- c) to the best of his knowledge and belief, the return is properly drawn up in accordance with applicable accounting standards in Malaysia and is accurate in all material respects.

27. The Commission shall, upon verification and acceptance of the licensee's return of revenues, notify each licensee in writing of the acceptance of the return of revenue and the amount of Contribution to the USP Fund required to be paid, if any, by the licensee and the time period within which the payment is to be made.

Payment to the universal service providers

28. A universal service provider is entitled to claim from the USP Fund the net USP cost for providing universal service in a universal service target. A universal service provider shall not be entitled to make any further claim from the USP Fund if there is no net USP cost for a period of three consecutive years.

Net USP cost claims

29. Universal service providers shall, not later than 31 March of each calendar year, submit a written claim to the Commission for the cost of universal service provision in a particular universal service target for the previous calendar year. The Commission shall verify the claim before any payment to the respective universal service providers are made.

30. A claim shall include:

- (a) the universal service provider's avoidable cost and revenue foregone for the previous calendar year; and
- (b) details of how the avoidable cost and revenue foregone have been worked out.

31. The claim under paragraph 29 shall be accompanied by a declaration of a licensed external auditor appointed by the universal service provider to certify that:

- a) he has been given sufficient access to the licensee's records to enable him to audit the claim;
- b) he has audited the claim;

- c) to the best of his knowledge and belief, the claim is properly drawn up in accordance with applicable accounting standards in Malaysia and is accurate in all material respects.

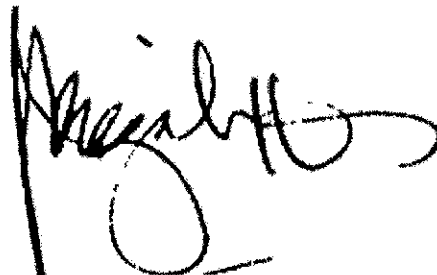
Extension of Time

32. Notwithstanding any provision to the contrary contained in this Determination, where a time period is specified under this Determination or in any request by the Commission for an act to be done or a condition to be fulfilled, the affected party may request for an extension of time in writing and the Commission may grant such extension of time as it deems fit.

Revocation and Transitional

33. With the coming into force of this Determination, the Commission Determination on Universal Service Provision, Determination No. 2 of 2001 shall be revoked. For avoidance of doubt, all actions taken and decisions made under the revoked Determination shall continue to be valid and effective until revoked.

Made: 13 December 2002



TAN SRI NURAIZAH ABDUL HAMID
Chairman
Malaysian Communications and Multimedia Commission

