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Telecommunications Ordinance 2004

UNIVERSAL SERVICE AND PUBLIC TELECOMMUNICATIONS REGULATIONS 2005

Regulations made by the Governor in Council under section 64 of the Telecommunications Ordinance 2004

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Part 1

PRELIMINARY

Citation and Scope

1 (1) These Regulations may be cited as the Universal Service and Public Telecommunications Regulations and shall come into operation on

(2) The aim of these Regulations is to ensure the availability throughout the Turks and Caicos Islands of universal services by establishing the obligations of certain service providers and the means of funding those obligations and to establish certain other obligations applicable to service providers.

Interpretation

2. (1) In these Regulations unless the context otherwise requires –

“Government” means the Government of the Turks and Caicos Islands;

“Ordinance” means the Telecommunications Ordinance 2004;

“universal service” means each of the services set forth in, or prescribed by the Commission pursuant to, section 3;

“Universal Service Fund” means the fund that may be established pursuant to section 29(5) of the Ordinance and section 12 of these Regulations; and

“universal service provider” means the service provider designated by the Commission to provide one or more universal services;

(2) Unless otherwise specified, terms used in these Regulations shall have the meanings assigned to them under the Ordinance.

Part 2

UNIVERSAL SERVICES

Universal services

3. (1) The following services are universal services for purposes of these Regulations –

(a) access to the public telephone service, as set out in section 4;

(b) the maintenance of public payphones, as set out in section 5;

(c) free Internet access for public libraries and public schools, as set out in section 6;

(d) access to emergency numbers free of charge;

(e) the provision of a free telephone directory, as set out in section 7;

(f) the provision of a directory inquiry service, as set out in section 7; and

(f) the provision of the universal services listed in (a), (b), (e) and (f) above, or such other services as the Commission may add pursuant to subsection (2), to low income or other special classes of users, as set out in section 8.

(2) The Governor, on the recommendation of the Commission may, in accordance with section 29(3) of the Ordinance, add services to the list of services set out in subsection (1), or modify obligations with respect to any universal service.

Provision of access to public telephone service

4. (1) A universal service provider designated to provide access to a public telephone service shall satisfy an end user's reasonable request to provide, at a physical location, a connection to a public telecommunications network in order to provide, at a minimum, access to a dial tone in order to be able to make voice telephone calls to other end users.

(2) Any connection provided by a universal service provider pursuant to subsection (1) shall, subject to the universal service provider's licence, be capable of allowing end users to –

- (a) make and receive national and international telephone calls;
- (b) make and receive data communications at data rates that are sufficient to permit functional access to the Internet;
- (c) have access to a directory inquiry service, including operator assisted information services, as set forth in section 7(1)(b); and
- (d) have access to emergency telecommunications numbers, as set forth in section 19, free of charge,

taking into account prevailing technologies used by the majority of subscribers and technological and economic feasibility.

Public payphones

5. (1) The Commission may designate one or more universal service providers to provide public payphones to meet the reasonable needs of the population in terms of geographical coverage, the number of payphones, the accessibility of such payphones to disabled users and the quality of services.

(2) The Commission may specify terms and conditions applicable to the provision of public payphones, for the purpose of ensuring that the requirements specified in subsection (1) are met.

(3) A universal service provider providing public payphones shall ensure that a user of any such public payphones –

- (a) has access to emergency numbers, as set forth in section 19, without the necessity to use coins or cards or any other means of payment; and
- (b) has access to a directory inquiry service, as set forth in section 7(1)(b).

Internet access for public libraries and public schools

6. (1) A universal service provider designated to provide Internet access for public libraries and public schools shall ensure that end users located in such places may make and receive data communications at data rates that are sufficient to permit functional access to the Internet.

(2) The access to the Internet required pursuant to subsection (1) shall be provided free of charge to public libraries, public schools and end users at such locations.

(3) This section 6 does not require that a universal service provider construct lines, build facilities or supply internal wiring or terminal equipment (including computers) except as provided in its licence or as otherwise may be determined by the Commission.

Telephone directory and directory inquiry service

7. (1) A universal service provider designated to provide a telephone directory and a directory inquiry service shall provide to its end users and to other service providers, based on data provided to it in accordance with subsection (3) –

- (a) free of charge, a directory of all subscribers, in a form approved of by the Commission, whether printed or electronic or both, that is updated at least once in each year; and
- (b) a directory inquiry service made available to all end users, including users of public payphones.

(2) A telephone directory or a directory inquiry service referred to in subsection (1) shall comprise, and make available information regarding, all subscribers of public telephone services in the Turks and Caicos Islands, including those with fixed, mobile and personal numbers, who have not refused to be included in such directories or service and, if the service provider is not otherwise in the possession of such information, who have provided the necessary information.

(3) Notwithstanding subsection (1), as permitted by the Commission, a universal service provider may provide information about its or other service provider’s subscribers who have not refused to be included therein, through means other than the public telephone service.

(4) The universal service provider designated under subsection (1) shall –

- (a) keep a record of all subscribers of public telephone services in the Turks and Caicos Islands, including those with fixed, mobile and personal numbers, who have not refused to be included in that record;
- (b) allow any other service provider or other person to have access to any information contained in such record in accordance with such terms and conditions as may be specified by it and approved by the Commission; and
- (c) apply the principle of non-discrimination to the treatment of information that has been provided to it by other service providers or which it has in its possession or under its control.

(5) Every service provider, other than the universal service provider designated under subsection (1), shall pay such universal service provider its fair share of the cost of publication of the directory of subscribers in accordance with an agreed upon formula that is based on the number of such service provider’s end users listed and the total number of subscribers listed in such directories.

Low income and other special user schemes

8. (1) The Commission may require that a universal service provider provide rate options or packages of telecommunications services to end users that depart from those provided under normal commercial conditions.

(2) In specifying the requirements pursuant to subsection (1), the Commission –

- (a) shall ensure that end users on low incomes or having special social needs are not prevented from having access to or using a public telephone service or other universal services;

- (b) may permit the universal service provider to provide service options or packages to such users that vary from the service provided under normal commercial conditions; and
- (c) shall take due account of any existing obligations of the universal service provider to provide such rate options or packages and of the need for the universal service provider to take measures to ensure that such users do not abuse such service options or packages to the detriment of the service provider.

Part 3

PROVISION AND TERMINATION OF UNIVERSAL SERVICE

Provision of universal service

9. (1) The Commission may, in accordance with section 29(4) of the Ordinance, periodically determine the manner in which a universal service shall be provided.

(2) The Commission shall designate one or more service providers to be universal service providers for a universal service.

(3) The designation of a service provider as a universal service provider shall be set out as a condition of such service provider's licence or shall be otherwise specified by such means as the Commission may from time to time determine.

(4) The Commission shall designate one or more universal service providers on a transparent and non-discriminatory basis using such mechanisms or methodologies as it shall specify.

Termination of a universal service

10. (1) A universal service provider that wishes to terminate the general offering to the public of a universal service may do so only by submitting a request to the Commission and after receipt of written approval from the Commission.

(2) No less than ninety (90) days in advance of the date on which the universal service provider wishes to terminate a universal service it shall submit a request to the Commission specifying which universal service it proposes to terminate, the reasons for the termination and the effect of such termination on end users.

(3) The Commission shall publish in the Gazette the request submitted pursuant to subsection (2).

(4) Prior to determining whether to approve or reject the request, the Commission shall review any comments it has received from interested persons regarding the proposed termination of the universal service.

Part 4

UNIVERSAL SERVICE FUNDING

Costing of universal service obligations

11. (1) Where a universal service provider incurs net avoidable costs, as defined in subsection 29(9) of the Ordinance, in providing a universal service for which it has been designated the universal service provider pursuant to section 9, it may seek to recover such costs by submitting to the Commission a written request.

(2) A request under subsection (1) shall be accompanied by such supporting information, including with respect to such periods of time, as may be reasonably required by the Commission for the purposes of subsection (3).

(3) The Commission shall, on the basis of such information it considers sufficient to enable a determination under this subsection to be made, including any information supplied pursuant to subsection (2), determine whether there is a net avoidable cost incurred by the universal service provider and, if so, whether such net avoidable cost unfairly burdens such provider.

(4) A universal service provider referred to in subsection (1) shall provide such information as is reasonably required by the Commission for the purposes of subsection (3).

(5) Where the Commission determines either that there is no net avoidable cost or that such net avoidable cost may not represent an unfair burden on the universal service provider it shall notify the universal service provider concerned of that determination, together with the reasons for the determination as soon as reasonably practicable after the determination is made.

(6) The accuracy of the accounts or other information, or both, that serve as the basis for the calculation of the net avoidable cost may, at the discretion of the Commission, be audited or verified, as appropriate, by the Commission or by a body independent of the universal service provider concerned and approved of by the Commission.

(7) The Commission shall make publicly available the results of the calculations of net avoidable costs and the conclusions of any audit or verification undertaken pursuant to this Regulation, except with respect to any information the disclosure of which is proscribed by section 8 of the Ordinance.

Establishing cost-sharing mechanism

12. (1) Where the Commission, on the basis of the net avoidable cost calculation referred to in section 11, finds that the net avoidable cost of fulfilling a universal service obligation is material and represents an unfair burden on a universal service provider it shall apportion such net avoidable costs among service providers and any one or more other providers of telecommunications services, or one or more users of such services.

(2) The Commission, in apportioning the net avoidable costs to which subsection (1) refers, shall establish a mechanism or process, which may include the Universal Service Fund.

(3) If established by the Commission, the Universal Service Fund may be –

(a) an actual fund, into which contributions made in accordance with section 13 shall be deposited and out of which payments made in accordance with section 14 shall be made; or

(b) an electronic clearing mechanism by which payments are made to apportion the net avoidable costs of fulfilling the obligations to provide one or more universal service in accordance with subsection (1).

(4) The Universal Service Fund shall be administered by a person designated by the Commission, which person shall be under the supervision of the Commission but be independent from carriers and providers of telecommunications services.

(5) The person designated by the Commission pursuant to subsection (4) shall be compensated by the Universal Service Fund in such manner and at such times as the Commission shall specify.

(6) Any apportionment by the Commission of the net avoidable cost of meeting a universal service obligation among service providers, other providers of telecommunications services and users, and the establishment and functioning of the mechanism or process established under subsection (2), shall respect the principles of transparency, non-discrimination among similarly situated persons and proportionality and shall not place an unreasonable burden on the universal service provider or any other person.

Contributions to cost-sharing mechanism

13. (1) If the Commission establishes the Universal Service Fund or uses another mechanism or process to allocate the net avoidable cost of meeting a universal service obligation, it shall use the following methodology to determine the amount of the contribution to be made by a service provider, and, if the Commission should so determine, any other provider of telecommunications services, that is obligated to share such net avoidable costs:

- (a) By thirty (30) days after the end of the first quarter of each calendar year, the Commission shall calculate the “universal service obligation (“USO”) contribution rate” for purposes of determining contributions to share the net avoidable costs of providing the universal services during the immediately preceding calendar year.
- (b) The USO contribution rate shall be calculated by dividing the annual net avoidable costs of all universal service providers for the immediately preceding calendar year (i.e., the total net avoidable costs of all universal service providers), as determined by the Commission based on the applications made pursuant section 14, by the total annual retail revenues of public telecommunications services provided by all service providers for the immediately preceding calendar year.
- (c) For purposes of the calculation required by clause (b), “total annual retail revenues of public telecommunications services” –
 - (i) means and includes all revenues collected in the Turks and Caicos Islands by a service provider (and any affiliated parties) from end users of public telecommunications services less such provider’s out-payments to foreign and domestic service providers (including affiliates), plus in-payments received by such provider from foreign and domestic service providers (including affiliates);
 - (ii) excludes any revenue –
 - (A) earned outside of the Turks and Caicos Islands;
 - (B) earned or collected within the Turks and Caicos Islands but solely in connection with services carried out in, or with respect to services originating and terminating in, locations outside of the Turks and Caicos Islands;
 - (C) from providing non-telecommunications services, including the sale, installation, repair or maintenance of terminal equipment, other equipment or any facilities, or from the construction of any facilities;
 - (D) from providing broadcasting services; or
 - (E) that the Commission has determined, upon application from a service provider and after consultation with other service providers, is to be excluded; and
 - (iii) may, where a public telecommunications service is bundled with a telecommunications or other service that is not a public telecommunications service, include such portion of the retail revenue from such bundled services as the Commission may require in accordance with such factors as it specifies.
- (d) Notwithstanding clause (c), upon application, the Commission may, as it deems necessary, make such adjustments in the definition of “total annual retail revenues of public telecommunications services” for and with respect to one or more service providers.

(2) For each service provider obligated to make contributions pursuant to section 12, the Commission (or the provider) will, within sixty (60) days after the end of the first quarter of each calendar year, multiply such provider's total annual retail revenues from providing telecommunications services in the Turks and Caicos Islands during the immediately preceding calendar year by the USO contribution rate for such year.

(3) The amount calculated pursuant to subsection (2), less the provider's own net avoidable costs of meeting its universal service obligations for such year, (as calculated in accordance with section 14, shall be the amount of contribution by such provider toward sharing the national net avoidable costs of fulfilling all of the universal service obligations for such immediately preceding calendar year.

(4) If the amount calculated pursuant to subsection (2) is less than zero, then the amount of the service provider's contribution shall be zero.

(5) The Commission shall either –

- (a) notify each service provider that is required to share the net avoidable costs, to which subsection (1) refers, of its obligation to contribute to such costs, including the amount, manner and timing of payments to be made; or
- (b) require that each such provider perform the calculation with respect to such net avoidable costs and inform the Commission thereof, in which case each such provider shall provide such supporting information to the Commission as the Commission shall specify and the amount of such providers' contribution.

(6) A service provider required to contribute an amount in accordance with this section 13 shall pay that amount into the universal service fund, or through such other mechanism or process, at such time and in the manner specified by the Commission.

(7) Contributions shall be made by service providers by the end of the second quarter of each calendar year.

(8) Notwithstanding the principles set forth in section 12(6), the Commission may choose not to require contributions from –

- (a) certain service providers that have an audited national turnover less than such amount as may, from time to time, be specified by the Commission; and
- (b) certain other classes of service providers.

(9) If the Commission chooses not to require contributions from service providers pursuant to subsection (8), the Commission, by such equitable method as it shall determine, shall allocate the expected contributions from such providers to other service providers that are obligated to contribute to the net avoidable costs of meeting universal service obligations.

(10) In cases where a service provider is obligated to share the net avoidable costs of meeting universal service obligations but defaults on, or otherwise fails to meet, such obligation –

- (a) the Commission shall pursue such defaulting provider for the contributions, the Government will be a creditor of the defaulting provider and the Government may take such actions against the defaulting provider as are permitted by law;
- (b) if the Commission and the Government are unable to recover the amount of the obligation from the defaulting provider pursuant to clause (a) after and despite having taken such actions, then the Commission may reallocate the expected contributions from such provider to other service providers that are obligated to contribute to the net avoidable costs of meeting such obligations; and

- (c) any reallocation pursuant to clause (b) will not relieve the defaulting provider of its obligation.

(11) If, pursuant to section 12(1), the Commission determines to apportion the net avoidable costs of the universal service obligations on providers of telecommunications services that are not service providers, or on users –

- (a) The Commission shall adjust the USO contribution rate accordingly; and
- (b) such providers or users shall be required to make a contribution based on their total annual retail revenues of providing or, in the case of users, using telecommunications services in the Turks and Caicos Islands and be otherwise subject to each provision of this section 13, as modified by the Commission.

Receipt of funds from cost-sharing mechanism

14. (1) Once the Commission has established the Universal Service Fund or other mechanism or process for apportioning the net avoidable costs of meeting the universal service obligations, any universal service provider may apply to receive funds therefrom to defray such net avoidable costs as it incurs in meeting such obligation.

(2) Any application pursuant to subsection (1) shall –

- (a) be made by the end of the first quarter after the conclusion of the calendar year in which the universal service provider incurred net avoidable costs; and
- (b) include such supporting information as the Commission may specify.

(3) Any universal service provider applying to receive funds pursuant to subsection (1) must maintain such records, for review and audit by the Commission on demand, demonstrating the revenues earned by such provider and the costs incurred by it in providing a universal service.

(4) Any disbursement made to a universal service provider pursuant to this section 14 shall be made after an offset for such provider's obligations to contribute to the Universal Service Fund or other mechanism, as calculated in accordance with section 13(3).

(5) Disbursements made pursuant to this section 14 shall be made no later than thirty (30) days after the second quarter after the conclusion of the calendar year in which the universal service provider incurred net avoidable costs in providing a universal service.

(6) At any time after the first year during which the calculations, contributions and disbursements are made pursuant to section 13 and this section 14, the Commission –

- (a) may, after consultation with service providers, modify the timetables set forth in such sections so as to require that that estimated contributions and disbursements toward the universal service obligations be made during or immediately upon the conclusion of the calendar year in which service providers incur net avoidable costs, based on the previously calculated USO contribution rate; and
- (b) in the case of modifications made pursuant to clause (1), require contributions and disbursements to be trued up in accordance with the actual net avoidable costs and USO contribution rate calculated in accordance with section 13.

Identification of universal service contributions

15. Any charges to providers of telecommunications services or end users arising from or related to the apportioning of the net avoidable costs of providing universal services shall, as such providers determine, be unbundled and identified separately on invoices or bills for telecommunications services.

Transparency of cost-sharing mechanism

16. (1) The Commission shall, except for information the disclosure of which is proscribed by section 7 of the Ordinance, publish an annual report setting out the calculated net avoidable costs of all universal service obligations, identify the contributions made by all the providers of telecommunications services involved and identify any benefits, including intangible benefits, that may have accrued to any provider of universal service.

(2) The Commission shall publish and make publicly available all information in relation to the principles used for the sharing of the net avoidable costs of the universal service obligations, including the details of the Universal Service Fund or other mechanism or process used.

Alternative means to fund universal service costs

17. Nothing in this Part 4 requires that the Commission establish a Universal Service Fund or any other mechanism or process or prevents any other sources of funding, including derived from government subsidy or auction, from being made available to enable the provision of a universal service or to defray any universal service provider's net avoidable costs of providing any universal service.

Part 5

PUBLIC TELECOMMUNICATIONS SERVICES

Service provider directory obligations

18. (1) Every service provider providing a public telephone service must provide –
- (a) its own directory inquiry service or make available to its end users the directory inquiry service of the universal service provider designated in section 7(1) based on an interconnection agreement or other commercially negotiated agreement between the two service providers; and
 - (b) an operator assisted information service that provides information about the service provider's service, including its rates, and that assists end users in making and completing calls.
- (2) A service provider providing a public telephone service shall ensure that its subscribers –
- (a) have the right, without any charge additional to the charge for the public telephone service, to have an entry in a telephone directory and be listed in a directory inquiry service, as provided for in section 7(1) and (2); and
 - (b) have an opportunity to refuse to have an entry in a telephone directory or a listing in a directory inquiry service or in any other listings that the service provider may provide.
- (3) A service provider that assigns telephone numbers to subscribers shall provide, on a timely basis, to the universal service provider designated under section 7 all information, in an agreed format and without charge, that is needed to maintain the record referred to in section 6A(4)(a), to provide telephone directories and to provide directory inquiry services.

Emergency telecommunications

19. (1) A service provider providing a public telephone service shall ensure that end users are able to have access to emergency telecommunications, including the ability to call the emergency services free of charge, by using the Turks and Caicos Islands emergency call number "911" and any other national emergency call number that may be specified by the Commission.

(2) A service provider shall, as soon as practicable, make caller location information available to authorities handling emergencies, to the extent technically feasible, for all calls to the Turks and Caicos Islands emergency call number “911” and any national emergency call number that may be specified by the Commission.

Disabled users

20. The Commission may specify obligations applicable to service providers, after consultation with representatives of disabled users and the service providers, for the purpose of ensuring that disabled end users can enjoy access to and affordability of public telephone services, including access to directory inquiry, operator assisted information and emergency services, equivalent to that enjoyed by other end users.

Quality of service

21. (1) A service provider shall, as the Commission may require, both provide to the Commission and publish adequate and current information concerning its performance in relation to the provision of its public telecommunications services.

(2) The information published pursuant to subsection (1) shall be based on the quality of service criteria and requirements set out in Schedule 1.

(3) The Commission may set performance targets for service providers, after consultation with service providers, in respect of any public telecommunications services as the Commission deems appropriate from time to time.

(4) The Commission may arrange, or require a service provider to which this Regulation refers to arrange, an independent audit or review paid for by the service provider concerned, of the performance data supplied by that service provider to ensure that the service provider is providing public telecommunications services in accordance with any applicable requirements or performance targets.

(5) In the case of persistent failure by a service provider to meet requirements or performance targets established by the Commission pursuant to subsections (2) and (3), the Commission may issue directions to the service provider concerned for the purpose of ensuring compliance therewith.

Integrity of the network

22. (1) The Commission may specify the obligations of a carrier or a service provider to ensure the integrity of such carrier’s telecommunications network or the availability of such service and, in the event of emergency or catastrophe, or in cases of *force majeure*, to ensure the availability of public telecommunications services throughout the Turks and Caicos Islands.

(2) A service provider providing a public telephone service shall take all reasonable steps to ensure uninterrupted access to emergency telecommunications services.

Statements

23. (1) A service provider shall establish rates and other terms and conditions for the provision of any additional services or equipment in such a way that the subscriber is not obliged to pay for services or equipment which are not necessary or not required for the service requested by him or her.

(2) A service provider shall comply with the requirements of Schedule 2, including with respect to the preparation and delivery of statements, to enable subscribers to monitor charges and other terms and conditions applicable to services that they are provided and to avoid unwarranted disconnection of service.

Part 6

MISCELLANEOUS

Continuation of existing obligations

24. A provider of telecommunications services shall continue to comply with any obligations applicable to it on the date of entry into force of these Regulations relating to retail prices for the provision of a public telephone service.

Schedule 1
Quality of Service Requirements

	Parameter	Target
1.	Supply time for initial connection 1. 95% of orders 2. 99% of orders	Average supply time (number of days from date of order): 1. 6 days 2. 10 days
2.	Punctuality of delivery of service	Percentage of orders for which service is activated on the day promised: 90% of service activations on day promised
3.	Fault repair time: 1. 80% of fault reports 2. 95% of fault reports	Average time in access network: 1. 12 hours 2. 16 hours Average time for other faults: 1. 8 hours 2. 12 hours
4.	Fault rate in the network per access line	Percentage of access lines in service that are out of service at any one time due to fault on service providers' side of network termination point: 1%
5.	Billing complaints	Number of complaints per year as a percentage of subscribers 2%
6.	Call set up time	Average for national calls: 1% Average for international calls: 3%
7.	Unsuccessful call ratio	Average for national calls: 1% Average for international calls: 1% Average for wireless calls: 2%
8.	Response time for operator services	Average time (in seconds) for operator to come on line: 3
9.	Response time for directory inquiry services	Average time (in seconds) for directory inquiry to come on line: 6
10.	Accessibility percentage for directory inquiry services	Percentage of calls to directory inquiry service that are unanswered: 2

Schedule 2
Statements for Public Telecommunications Services

A. Basic Subscriber Statement

(1) A service provider must provide a basic statement to its subscribers free of any additional charge beyond the basic charge for the telecommunications service.

(2) The basic statement must itemise the charges for the telecommunications services provided to the subscriber.

(3) Included in the itemisation on the basic statement must be charges for installation, monthly access, international calls, local calls, operator assisted information and other directory inquiry services (if any), and any other additional telecommunications services (e.g., voicemail) subscribed to or used by the subscriber.

(4) Each individually charged international long distance call must be separately itemised, indicating the applicable rate, charging units (such as minutes) and total charge for such call.

(5) Charges for leases or purchases of equipment, if any, must be stated separately.

(6) Taxes and other charges imposed by the Commission or the Government, including any contributions to pay for the provision of universal services in the Turks and Caicos Islands, must be separately itemised.

(7) The basic statement need not identify calls that are provided free of charge.

B. Additional Detail in Statement

(1) A service provider may offer additional levels of details in its billing statements, beyond the requirements of those set forth in section (A), at no charge or at a reasonable price.