



# Universal Service Obligations on Electronic Communications Services

## Consultation and Proposed Decision

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## EXECUTIVE SUMMARY

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The Malta Communications Authority (hereinafter referred to as “MCA” or the “Authority”) is empowered to establish universal service obligations (hereinafter referred to as “USOs”) to act as a safety net for consumers. The Authority is required by national legislation to ensure that an adequate broadband internet access service and voice communications service at the specified quality, including the underlying connection, at a fixed location are made available to all consumers in the Maltese islands, independently of geographic location, and, in the light of specific national conditions, at affordable prices. The MCA is also required to ensure the continuation of the availability and affordability of existing universal services when justified according to the national circumstances.

On the 11<sup>th</sup> December 2018 Directive (EU) 2018/1972 of the European Parliament and of the Council was published, establishing the European Electronic Communications Code (hereinafter referred to as “EECC”)<sup>1</sup>. In March 2021, the Authority published a Decision Notice entitled ‘*Review of Universal Service Obligations on Electronic Communication Services, Response to Consultation and Decision*’ (Document reference MCA/D/21-4167, hereinafter referred to as “2021 USO Decision”) which included updates to the universal service obligations in the electronic communications sector to address pressing evolving market and technological requirements. This was an interim measure taking into account that further reviews and subsequent updates to the universal service obligations were scheduled to take place following the transposition of the EECC into national law, which law was eventually made and brought into force on the 1<sup>st</sup> of October 2021<sup>2</sup>. The 2021 USO Decision no longer imposes the provision of certain universal service obligations including public payphones, facsimile communications services and the provision of pre-payment services specifically on fixed telephony services, subject to a number of conditions established in the same document.

In October 2021, the MCA also published another Decision entitled ‘*Broadband as a Universal Service - Ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location*’ (Document reference MCA/D/21-4417, hereinafter referred to as “2021 Broadband Decision”) to ensure the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location. The 2021 Broadband Decision sets out the minimum functional characteristics for an adequate broadband internet access service in Malta, the approach for ensuring that an adequate broadband internet access service, including the underlying connection, at a fixed location is available to an end-user’s premises following a reasonable request and it sets out the MCA’s Decision on the availability of an adequate broadband internet access service.

In addition to the USO updates carried out in 2021, this document is intended to analyse, identify and define which other services should be considered as universal services, consider whether certain universal services obligations established before transposition of the EECC under national law should be updated and/or waived, and identify resulting changes in providers of services responsible to provide those universal services. The Authority may designate different undertakings or sets of undertakings to provide

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

<sup>2</sup> Reference to L.N. 377, 378 and 379 of 2021 published on the 1<sup>st</sup> of October 2021.

an adequate broadband internet access service and voice communications services at a fixed location or to cover different parts of Malta. The provisions of the 2021 Broadband Decision are also being integrated with the new proposed decisions. Nevertheless, the MCA would like to point out that **it is not consulting on the provisions of the 2021 Broadband Decision** since these provisions were already the subject of a separate consultation process. The Authority had taken into consideration the responses received from stakeholders during the consultation process prior to the publication of its 2021 Broadband Decision.

The MCA is proposing to include a number of updates to these obligations:

- Provision of an adequate broadband internet access service and voice communications services at a fixed location;
- Provision of reduced tariff options;
- Provision of other specific measures for vulnerable users;
- Control of expenditure by users; and
- Comprehensive electronic directory.

Providers responsible for the provision of all or part of the universal service obligations may submit a claim for compensation in relation to any unfair burden they claim to have suffered as a result of providing each respective universal service obligation. The MCA would subsequently evaluate the information submitted in order to determine whether an unfair burden really exists.

The MCA is seeking the views of interested stakeholders on the proposals put forward in this consultation paper. The Authority will take into consideration the submissions received and will subsequently publish a Decision on the subject.

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## 1. INTRODUCTION

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In the electronic communications services sector, a universal service is defined as a safety net to ensure that at least certain minimum services are available to all end-users at an affordable price, where a risk of social exclusion arising from the lack of such availability prevents citizens from full social and economic participation in society.<sup>3</sup> It is a fundamental requirement to ensure that all consumers, including vulnerable users, have access at an affordable price to available adequate broadband internet access and voice communications services, at a fixed location and where necessary the possibility to offer these services other than at a fixed location to citizens on the move. Connection can be provided without any restrictions or limitations to technical means allowing wired or wireless technologies, and providers may be required to provide part or all of universal service obligations.

The Authority has the right to monitor the evolution and level of retail prices of an available adequate broadband internet access service and voice communications services, particularly in relation to national prices and national consumer income. The MCA may, together with any competent public body, take measures as it considers appropriate to ensure that support is provided to consumers or require providers of such services to offer special tariff options or packages. In exceptional cases, the MCA may designate an undertaking to offer these special tariff options<sup>4</sup>.

Ensuring the availability of voice communications and adequate broadband internet access services at a fixed location is also a requirement for the Authority and, in any designations of undertaking(s) to provide such services, the MCA is required to use an efficient, objective, transparent and non-discriminatory designation mechanism. The providers of broadband internet access and/or voice communications services responsible for the provision of all or part of the universal service obligations may request compensation in relation to any unfair burden they claim to have suffered as a result of fulfilling each respective universal service obligation. The MCA would subsequently evaluate the information submitted by the undertaking in order to determine whether an unfair burden really exists.

Currently the universal service regime is based on the Decision entitled *'Review of Universal Service Obligations on Electronic Communication Services, Response to Consultation and Decision'* which was published by the MCA in March 2021 as an interim decision before the EECC was transposed into national legislation, and on the Decision entitled *'Broadband as a Universal Service - Ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location'* which was published by the MCA in October 2021. At present, the universal service obligations include:

- Provision of Voice Communications Service and of Broadband Internet Access Service at a Fixed Location;
- Comprehensive Electronic Directory;
- Provision of Specific Measures for Vulnerable Users;
- Provision of Reduced Tariff Options; and
- Control of Expenditure by Users.

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<sup>3</sup> European Electronic Communications Code, Recital 212

<sup>4</sup> S.L. 399.48, Regulation 72

The provision of public payphones as a universal service obligation was withdrawn in the 2021 USO Decision. It was also established that new obligations are set to come into force when new designations are carried out given that the new framework was set to come into force in a subsequent period following the publication of the interim decision.

Following the coming into force of the national legislation transposing the EECC in Malta on 1<sup>st</sup> October 2021<sup>5</sup>, the MCA is hereby publishing this consultation paper to redefine the universal service obligations in line with national legislation.

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<sup>5</sup> As a result of the EECC transposition, the Electronic Communications (Regulation) Act (Cap. 399) was amended by Act Number LII of 2021, and the Electronic Communications Networks and Services (General) Regulations (S.L. 399.28) was repealed by L.N. 379 of 2021 and replaced by S.L. 399.48 with effect from 1<sup>st</sup> October 2021.

## 2. LEGAL BASIS

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Article 4(3) of the Malta Communications Authority Act, CAP. 418 (hereinafter referred to as “the MCA Act”) establishes that the Authority is entitled to enforce, regulate, monitor, and keep under review all practices, operations and activities being regulated and carry out any research or investigation of any matters regulated by or under the MCA Act. The MCA Act also establishes that the Authority shall promote the interest and rights of all users in Malta including end-users with disabilities, the elderly and those with special social needs.

The fundamental provisions relating to universal service obligations are laid out in the EECC, the Electronic Communications (Regulation) Act, CAP. 399 (hereinafter referred to as “the Act”) and the Electronic Communications Networks and Services (General) Regulations, S.L. 399.48 (hereinafter referred to as “the Regulations”).

Article 2 of the Act defines the term “universal services” as “the minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price as may be defined by or under this Act”. The Act gives the MCA the power to stipulate universal service obligations and assigns the Authority the responsibility for assessing the unfair burden and calculating the net cost incurred by the provision of the universal service obligations.

Part X of the Regulations entitled “Universal Service Obligations” lays out in further detail the provisions relating to universal service obligations.

Regulation 71 of the Regulations describes the requirements for the provision of an adequate broadband internet access and voice communications services at specified quality and at affordable rates, including the underlying connection, at a fixed location. The Authority may also consider it necessary to ensure affordability of adequate broadband internet access and voice communications services that are not provided at a fixed location where this is considered necessary to ensure full social and economic participation of consumers in society. Regulation 71 also stipulates that the Authority shall define a minimum bandwidth for an adequate broadband internet access service capable to at least support the minimum set of services outlined in the Fifth Schedule of the Regulations, whilst also taking into consideration national conditions and the minimum bandwidth enjoyed by the majority of consumers in Malta. Consumers should also be provided, upon request, with the option to choose to have access solely to support voice communications services. The Authority may extend the scope of Regulation 71 to apply also to end-users that are micro-enterprises, small and medium-sized enterprises, and not-for-profit organisations.

Regulation 72 of the Regulations establishes that the Authority shall monitor retail prices available on the market in relation to national prices and consumer income. To ensure affordability for consumers on low income or special social needs, the Authority has the power where applicable together with any competent public bodies to take measures to ensure that vulnerable users are not prevented from accessing such services. For this purpose, the Authority may require such providers to apply common tariffs, including geographic averaging, throughout Malta. In exceptional circumstances, the Authority may impose the obligations emanating from this Regulation only on designated undertaking(s), in particular if it results in



excessive administrative or financial burden for providers or for Government to introduce such obligations on all providers of broadband internet access and/or voice communications services. The Authority is also required, together where applicable with the competent public body or bodies, to ensure, in light of national conditions and as appropriate, that support is provided to consumers with disabilities and that other specific measures are taken to ensure that related terminal equipment and specific equipment and specific services that enhance equivalent access are available and affordable.

Regulation 73 of the Regulations establishes that when the Authority recognises that the availability at a fixed location of an adequate broadband internet access service and of voice communications services cannot be ensured under normal commercial circumstances or through other public policy tools, the Authority may impose appropriate universal service obligations to meet all reasonable requests by end-users for accessing those services in the relevant parts of Malta. The Authority shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of an adequate broadband internet access and voice communications services, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. It may impose obligations to ensure availability of universal services and it may designate different undertakings or sets of undertakings to ensure availability across the Maltese islands. The provisions in this Regulation would also apply in the exceptional circumstances where the Authority designates undertaking(s) to address the obligations established in Regulation 72.

In accordance with Regulation 74 of the Regulations, the Authority may continue to ensure the availability or affordability of services other than adequate broadband internet access and voice communications services at a fixed location. If it is considered necessary for the continuation of existing universal service obligations, the Authority may designate undertaking(s) in part or all of Malta for the provision of such services and in accordance with the designation provisions in Regulation 73 of the Regulations. The Authority shall review the obligations imposed on universal service provider(s) as identified through Regulation 74 and every three years thereafter.

Regulation 75 of the Regulations establishes that providers of broadband internet access and/or voice communications services are required to establish terms and conditions in such a way that end-users are not obliged to pay for facilities or services which are not necessary or required for the service requested. Providers of broadband internet access and/or voice communications services shall also offer specific facilities and services set out in Part A of the Sixth Schedule of the Regulations as applicable in order that consumers can monitor and control their expenditure. The Authority may extend the scope of this Regulation to apply also to end-users that are micro-enterprises, small and medium-sized enterprises, and not-for-profit organisations.

Regulations 76 and 77 of the Regulations establish the provisions on the cost and financing of the universal service obligations. When the Authority considers that the provision of such services may represent an unfair burden on the providers of broadband internet access and/or voice communications services responsible for the provision of all or part of the universal service obligations as set out in Regulations 71 to 74 of the Regulations, it shall calculate the net cost of such provision. Universal service providers may request a compensation by submitting a detailed written request to the Authority including accounting calculations and other information to prove the unfair burden. Based on the net cost calculation, when the Authority finds that a universal service provider is subject to an unfair burden, it shall either introduce a

mechanism to determine financing from public funds or share the net cost of the universal service obligations between the providers of electronic communications services. Regulation 78 of the Regulations stipulates measures to ensure transparency in the calculation of the net cost of universal service obligations and financing mechanisms. Regulation 79 of the Regulations enables to Authority to introduce additional universal service obligations in Malta subject that the compensation mechanism would not involve specific undertakings.

## 3. UNIVERSAL SERVICE OBLIGATIONS

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### 3.1 Access to an Affordable Adequate Broadband Internet Access Service and Voice Communications Services at a Fixed Location

#### 3.1.1 Definition of the Universal Service Obligation

##### 3.1.1.1 Objectives

In line with the Regulations, the MCA may specify requirements, in relation to the reasonableness of requests for access to an adequate broadband internet access service<sup>6</sup> and to voice communications services<sup>7</sup> at the quality specified, including the underlying connection, at a fixed location, which are to be complied by providers of broadband internet access and/or voice communications services which are in exceptional cases designated to ensure availability in the relevant parts of Malta.

For this consultation document, it is only the part related to voice communications services which is subject to this consultation process since the aspects related to adequate broadband internet access service have already been addressed in a separate consultation process. A decision notice was subsequently published by the MCA after taking into consideration the feedback received during the consultation process. Hereunder, the MCA is integrating the provisions established in the 2021 Broadband Decision with new proposed decisions for the voice communications service element for completeness purposes.

Connections at a fixed location are important for end-users to have an adequate broadband internet access service and to ensure that no end-users are in any way excluded from the digital society. At present, 86%<sup>8</sup> of households in Malta have a broadband connection at a fixed location, with over 98% of all fixed broadband subscribers opting for a package of more than or equal to 30 Mbps<sup>9</sup>. Nevertheless, there may be exceptional cases when an end-user might not be able to subscribe to voice communications and

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<sup>6</sup> The term “internet access service” is defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120 as a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.

<sup>7</sup> In accordance with Article 2 of the Act, a voice communications service means a publicly available electronic communications service which uses specifically assigned numbering resources from the national numbering plan for originating and receiving, directly or indirectly, national calls or national and international calls through a number or numbers in a national or international numbering plan. “Voice communications service” is a subset of “number-based interpersonal communications service”. In the MCA’s 2021 USO Decision, facsimile communications service was withdrawn as part of the universal service and the Authority is retaining this position.

<sup>8</sup> Digital Economy and Society Index (DESI), Malta 2021 at <https://digital-strategy.ec.europa.eu/en/policies/desi-malta>

<sup>9</sup> Refer to MCA’s report on the ‘Key Market Indicators for Electronic Communications and Post’ at <https://www.mca.org.mt/articles/key-market-indicators-electronic-communications-and-post-q1-2017-q4-2021>

adequate broadband internet access services at a fixed location, under normal commercial conditions, due to geographical availability issues such as in the case of households/businesses located in remote areas.

The geographical and population characteristics of the Maltese Islands, including their small size and high population density are also taken into account. The MCA in earlier decisions reiterated that any request for the provision of connection and access at a fixed location emanating from within the Maltese Islands shall be considered as reasonable. As has been the case since the MCA's USO Decision of 2010, the application of a standard connection fee is not being included, since there could be extraordinary circumstances where a higher connection charge could be justifiable.

### **3.1.1.2 Functional Characteristics**

The underlying connection provided as part of the universal service is required to enable voice communications services, including the capability to allow end-users to make and receive local and international calls, and adequate broadband internet access service. This is subject to prevailing technologies used by the majority of subscribers and technological feasibility.

In accordance with Regulation 71(3) of the Regulations, the MCA is required, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers in Malta, taking also into account the BEREC report entitled *'Member States best practices to support the defining of an adequate broadband internet access service'*<sup>10</sup>, on best practices published in accordance with Article 84(3) of the EEC, to define the adequate broadband internet access service for Malta with a view to ensuring the bandwidth necessary for social and economic participation in society. The broadband internet access service must be capable of delivering the bandwidth necessary for supporting at least the minimum set of services set out in the Fifth Schedule of the Regulations, namely, e-mail, search engines enabling search and finding of all types of information, basic training and education online tools, online newspapers or news, buying or ordering goods or services online, job searching and job searching tools, professional networking, internet banking, eGovernment service use, social media and instant messaging, calls and video calls (standard quality).

The above-mentioned BEREC report identified a set of common principles in defining an adequate broadband internet access service based on national considerations. The report aims to contribute towards the consistent application of the EEC by Member States in the introduction of an adequate broadband internet access service as a universal service. The BEREC report refers to the 2011 COCOM report (COCOM10-31 Final) entitled *'Implementation of the revised Universal Service Directive: Internet related aspects of Article 4'*.<sup>11</sup> The COCOM report provided clarification of the Universal Service Directive (Directive 2009/136/EC) in relation to internet related aspects. Although based on the 2009 EU regulatory framework, the COCOM report serves to inform the definition of an adequate broadband internet access service under

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<sup>10</sup> In line with the EEC [Article 84(3)] in June 2020 BEREC published a report on Member States' best practices to support the defining of adequate broadband internet access service. This first report will be updated regularly by BEREC to reflect technological advances and changes in consumer usage patterns.

<sup>11</sup> European Commission Information Society and Media Directorate General, Communications Committee Working Document "Implementation of the revised Universal Service Directive: internet related aspects of Article 4", COCOM10-31 Final, Brussels, 10<sup>th</sup> January 2011.

the EECC. The COCOM report established that the assessment of a decent data rate for functional internet access can be based on whether the data rate is used at national level by:

- (i) at least 50% of all households; and
- (ii) at least 80% of all households with a broadband connection.

The 2021 Broadband Decision establishes the functional characteristics of an adequate broadband internet access services. In summary, taking into account Malta's nationwide fixed broadband access network coverage by more than one technology, the prevailing bandwidth used by the majority of broadband consumers and the entry level fixed broadband packages available on the market, it was proportionate and justified to consider that an adequate broadband internet access service, including the underlying connection at a fixed location, should consist of the following minimum functional characteristics:

- a download sync speed of at least 30 Mbps (i.e. modem sync speed is the maximum speed available between an end-user's premises and their internet service provider's network);
- an upload sync speed of at least 1.5 Mbps;
- latency that is capable of allowing the end-user to make and receive voice and video calls effectively; and
- an unlimited data usage cap (subject solely to reasonable traffic management policies as per Regulation (EU) 2015/2120).

These functional characteristics allow for an adequate broadband internet access service at a fixed location that enables full and effective participation in the digital society and supports at least the minimum set of services set out in the Fifth Schedule of the Regulations. Any technology that can deliver the above functional characteristics counts as an adequate broadband internet access service at a fixed location. The functional characteristics for an adequate broadband internet access service at a fixed location are deemed sufficient to meet the digital needs of a typical household and the needs of small-sized enterprises. The 'floor' set for the minimum functional characteristics of an adequate broadband internet access service as a universal service for Malta is the ideal one under present circumstances. It is recognised that over time the functional characteristics will need to be increased as more users take up higher speeds and the needs of end-users change. A minimum download speed of 30 Mbps also reflects the EU's Digital Agenda broadband 2020 target of 100% of Europeans having access to at least 30 Mbps download speed. The European Commission also sets a goal of providing speeds of at least 100 Mbps to all European citizens, upgradable to 1 Gbps, by 2025 (Commission communications on a Gigabit Society and 5G Action Plan on 1<sup>st</sup> June 2017).

Broadband availability as a universal service provides an eligible end-user with a right to request and subscribe to a broadband internet access service at a fixed location that meets, as a minimum, the defined functional characteristics of an adequate broadband internet access service in those cases when an existing provider is unlikely to be in a position to provide such a service to the end-user's premises.

The universal service requirement that sets the minimum functional characteristics for an adequate broadband internet access service is seen as a 'floor' that in no way hampers the provision by a broadband provider of higher - or even lower - functional characteristics of a fixed wired or wireless broadband internet access service. What is essential is that, within reasonable bounds, all people and businesses in Malta can

have the ability to access the internet via what is considered as an adequate broadband internet access service.

NOTE: The functional characteristics established in the 2021 Broadband Decision are not open for consultation since, as stated above, a separate consultation process had already taken place. These functional characteristics are being integrated in this consultation document for completeness purposes.

### **3.1.1.3 Availability**

With the availability of fast and superfast fixed broadband technologies across Malta by more than one provider, all premises (residential and business) should be in a position to receive an adequate broadband internet access and voice communications services with at least the defined minimum functional characteristics mentioned above. In fact, over the past years, complaints resulting from lack of access to an available decent broadband internet access and/or voice communications services at a fixed location have been very few, and the market was in a position to cater for such requests. In general, the availability of adequate broadband internet access and voice communications services, including the underlying connection, at a fixed location can be ensured by market forces. However, it is recognised that there may be exceptional cases when the market may not provide an end-user with an adequate broadband internet access and/or voice communications service. Taking into consideration the coverage of high-speed broadband technologies across Malta there are only very few cases where an end-user is not able to subscribe to an adequate broadband internet access and/or voice communications services at a fixed location, under normal commercial conditions, due to geographical availability issues.

As a safety net, in order to cater for those exceptional cases where the market does not provide end-users in certain areas with a connection capable of delivering an adequate broadband internet access and/or voice communications services at a fixed location, the MCA may then need to designate an undertaking to deliver the universal service to an eligible end-user, following a reasonable request by the end-user concerned. The universal service will provide an eligible end-user with a right to request and subscribe to a broadband internet access service and/or voice communications services that meet, as a minimum, the defined functional characteristics of an adequate broadband internet access and voice communications services in those cases when no existing undertaking is in a position to provide such service/s to the premises of the end-user.

Interested stakeholders are invited to provide their feedback on aspects related to the availability of voice communications services at a fixed location.

NOTE: The availability of an adequate broadband internet access service established in the 2021 Broadband Decision is not open for consultation.

#### **3.1.1.4 Eligibility**

In order to ensure that requests are reasonable, an end-user would be considered eligible for the provision of an adequate broadband internet access and voice communications services at a fixed location under a USO if all of the following conditions are met:

- the connection is to a fixed location consisting of a place of residence, of a business premises, or of a premises used by a not-for-profit organisation;
- a prospective end-user requests that a connection is provided to that location; and
- a broadband internet access and/or voice communications service on an existing network that meets or exceeds the defined minimum functional characteristics (whether provided through wired or wireless technologies, such as services provided over mobile networks) is not available to that location.

Only premises which are permanent residential, or business (including micro-enterprises, small and medium-sized enterprises, and not-for-profit organisations) premises will be considered eligible for an adequate broadband internet access and/or voice communications services, under a USO. The MCA will, amongst others, use the postcode postal address database, local business databases and when necessary, information from the end-users, in order to establish whether the address of that location meets the definition of being a fixed location, and whether an end-user is eligible for a broadband internet access and/or voice communications service under a USO.

The universal service provider also has the obligation to provide end-users with the option to, as a minimum, choose access to voice communication services or an adequate broadband internet access service at a fixed location as a standalone service without the requirement to enrol into any other electronic communications service.

Interested stakeholders are invited to provide their feedback on the proposed eligibility considerations for voice communications services at a fixed location.

NOTE: The eligibility considerations for an adequate broadband internet access service established in the 2021 Broadband Decision are not open for consultation.

**Proposed Decision 1, incorporating Decisions 1 and 2 of the 2021 Broadband Decision (Document reference MCA/D/21-4417)**

(\*Proposed updates to MCA/D/21-4167 and MCA/D/21-4417 are shown underlined. Decisions established in MCA/D/21-4417 are not open for consultation).

The universal service shall include access to an adequate broadband internet access service and voice communications services, including the underlying connection, at a fixed location in any given area throughout Malta where there are no existing providers of public electronic communications networks in a position to provide connection at a fixed location to the end-users at an affordable price.

Such a connection must enable:

- [i] voice communications services, including the capability to allow end-users to make and receive local and international calls; and
- [ii] an adequate broadband internet access service.

An adequate broadband internet access service, including the underlying connection at a fixed location, should consist of the following functional characteristics:

- a download sync speed of at least 30 megabits per second;
- an upload sync speed of at least 1.5 megabit per second;
- latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively; and
- an unlimited data usage cap (subject solely to reasonable traffic management policies as per Regulation (EU) 2015/2120).

An end-user would be considered eligible for the provision of an adequate broadband internet access and voice communications services at a fixed location under a USO if all of the following conditions are met:

- the connection is to a fixed location consisting of a place of residence, of a business premises, or of a premises used by a not-for-profit organisation;
- a prospective end-user requests that a connection is provided to that location;
- a broadband internet access and/or voice communications service on an existing network that meets or exceeds the defined minimum functional characteristics (whether through wired or wireless technologies, such as services provided over mobile networks) is not available to that location.

The universal service provider shall provide end-users with the option to, as a minimum, choose access to voice communications services or an adequate broadband internet access service at a fixed location as a standalone service without the requirement to enrol into any other electronic communications services.

The MCA reserves the right to monitor and review this decision in accordance with its powers at law to ensure affordability.



### **3.1.2 Designation**

In those exceptional cases when an end-user notifies the MCA of his/her inability to secure an adequate broadband internet access service and/or voice communications services at a fixed location with one of the existing providers, the MCA will first confirm whether the end-user is eligible for the service under a USO as per Proposed Decision 1. If an end-user is eligible for an adequate broadband internet access and/or voice communications services under a USO, the MCA will then issue a written request for interest to the service providers to assess whether a provider is willing to provide the end-user with an adequate broadband internet access and/or voice communications services, that meets or exceeds the defined minimum functional characteristics under normal commercial conditions. In expressing interest, a provider must provide information on the type of fixed broadband technology, or mix of technologies, and on the main steps and timeframes to provide an adequate broadband internet access service and/or a voice communications service to the premises of an eligible end-user.

Even though requests for an adequate broadband internet access and/or voice communications services under a USO are exceptional, the Authority must still consider the possibility either that no provider is willing to provide an eligible end-user with an adequate broadband internet access and/or a voice communications service, or that the interested provider/s do not satisfy the criteria set in the written request issued by the MCA. If there is no interested provider willing to provide the service, or alternatively if the provider does not satisfy the criteria set in the written request by the Authority, then a practical and effective solution is to designate an existing provider having the closest available broadband network (whether provided through wired or wireless technologies, such as services provided over mobile networks) to the end-user's premises to deliver the USO. In the above-mentioned written request for interest, the MCA would also request information on the provider's (fixed) broadband networks deployed in the relevant area, to enable the Authority to base its decision on information made available from the provider/s concerned. In the future, geographical mapping of network deployments will provide the MCA with additional information on the reach of broadband networks and the available technology and services (including upload and download speeds) available in a particular area<sup>12</sup>.

Interested stakeholders are invited to provide their feedback on the designation process proposed for the provision of voice communications services at a fixed location.

NOTE: The designation process for the provision of an adequate broadband internet access service established in the 2021 Broadband Decision is not open for consultation.

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<sup>12</sup> In accordance with Regulation 17 of the Regulations, the MCA will be responsible to conduct a geographical survey of the reach of electronic communications networks capable of delivering broadband ("broadband networks").

**Proposed Decision 2, incorporating Decision 3 of the 2021 Broadband Decision (Document MCA/D/21-4417)**

**(\*Proposed updates to MCA/D/21-4417 are shown underlined. Decisions established in MCA/D/21-4417 are not open for consultation.)**

**If an eligible end-user requests the support of the MCA, the Authority shall issue a written request for interest to assess whether an existing provider is willing to provide the end-user with an adequate broadband internet access and/or a voice communications service, that meets or exceeds the minimum functional characteristics defined in Decision 1, under normal commercial conditions. In the same written request for interest, the MCA shall also request information on the provider's (fixed) broadband networks deployed in the relevant area.**

**If there is no provider willing to provide the service, or if alternatively an interested provider who applies does not satisfy the criteria set in the written request, then the MCA shall directly designate a provider it deems best suited to deliver the USO, taking into consideration the public electronic communications networks closest to the end-user's location.**

### ***3.1.3 Provisioning of the Universal Service Obligation***

In delivering the USO, the MCA would expect the designated universal service provider to supply the broadband internet access and/or voice communications services, including the underlying connection, to the end-user's premises as quickly as possible and in any case within a maximum period of thirty (30) calendar days after the eligible end-user has placed his/her order with the designated universal service provider for the provision of an adequate broadband internet access and/or voice communications services. Such a period will not however apply if the MCA considers that there are justified exceptional circumstances that make it difficult to provide such service/s within the aforesaid period.

There will be no constraints on the technical means by which an adequate broadband internet access and/or voice communications services at a fixed location are provided by a universal service provider, allowing for wired or wireless technologies (such as services provided over mobile networks when used to access broadband at a fixed location), nor any constraints on which undertakings provide the USO. In order to provide the USO, a provider may use the technology or technologies it deems most appropriate. In practice the use of wired technologies is likely to be an efficient technology choice for delivering an adequate broadband internet access and/or voice communications services to the premises of an end-user. There may however be circumstances where wireless technologies may be more appropriate, as long as they are capable of delivering the established minimum functional characteristics established for an adequate broadband internet access and/or voice communications services at a fixed location. In delivering the USO, an undertaking would be required to provide the broadband internet access and/or voice communications services, including the underlying connection, to the premises of an end-user at the same price and quality of service levels (i.e. concerning faults, compensation schemes, etc.) as equivalent services offered to its non-USO customers. An end-user would be required to subscribe to, and pay, for a broadband internet access and/or voice communications service package. An end-user should not be required to pay

more than for equivalent broadband internet access and/or voice communications services provided in other parts of Malta. Nevertheless, as reflected in the 2021 USO Decision, there could be extraordinary circumstances when a higher connection charge to a particular location could be justifiable. This has been the standard approach taken by the MCA when establishing the USO for access to a fixed connection as a universal service. Once an end-user enters into a contract with the designated undertaking for the provision of an adequate broadband internet access and/or voice communications services, their relationship will be one of a normal customer's relationship with the retail provider.

Interested stakeholders are invited to provide their feedback on aspects related to the provisioning of voice communications services at a fixed location.

NOTE: The provisioning of an adequate broadband internet access service established in the 2021 Broadband Decision is not open for consultation.

**Proposed Decision 3, incorporating Decision 4 of the 2021 Broadband Decision (Document MCA/D/21-4417)**

**(\* Proposed updates to MCA/D/21-4417 are shown underlined. Decisions established in MCA/D/21-4417 are not open for consultation.)**

**A designated undertaking is required to offer the broadband internet access and/or voice communications services, including the underlying connection, at a fixed location at prices which are uniform throughout Malta and are equivalent to services offered to its non-USO end-users, unless the MCA has determined that there is clear justification for not doing so.**

**A designated undertaking is required to offer the same level of quality of service to premises connected under the USO as it does to premises connected to the rest of Malta.**

**A designated undertaking is required to supply the broadband internet access and/or voice communications services, including the underlying connection, to the end-user's premises as quickly as possible and in any case within a maximum period of thirty (30) calendar days after the eligible end-user has placed his/her order with the designated universal service provider for the provision of an adequate broadband internet access and/or voice communications services. Such a period may not apply if the MCA considers that there are justified exceptional circumstances that make it difficult for the provider to provide the service/s within such a period. Once an end-user enters into a contract with the designated undertaking for the provision of an adequate broadband internet access and/or voice communications services, their relationship will be one of a normal customer's relationship with the retail provider.**

## 3.2 Support to Consumers with a Low Income or Special Social Needs

In accordance with the Regulations, the Authority may take measures, where applicable together with any competent public bodies, to ensure that support is provided to consumers with low income or special social needs for communication purposes, or to require providers to offer special tariff options and/or packages different from those provided under normal commercial conditions to ensure that affordable prices are enjoyed by such users<sup>13</sup>. Support may also be provided in other forms such as part of social allowances, vouchers, or direct payments<sup>14</sup>.

Providers of voice communications and/or broadband internet access services may provide such support to vulnerable consumers. In exceptional cases where the imposition of related universal service obligations on all providers would result in demonstrated excessive administrative or financial burden for the providers or the Government, the Authority may then decide to impose the obligation to offer specific social tariff options only on designated undertakings<sup>15</sup>. Where the Authority proceeds with such a designation, it shall ensure that all consumers with a low income or special social needs will benefit from a choice of designated undertakings, unless such choice is considered impossible or would create an excessive additional organisational or financial burden<sup>16</sup>. Consumers eligible for social tariffs have the right to conclude a contract either with a service provider of their choice or with a designated undertaking, and their phone number should remain available to them for an adequate period of time, and unjustified disconnection of the service should be avoided<sup>17</sup>.

### 3.2.1 Social Tariffs or Direct Allowances

As stated above, the MCA may require providers of voice communications and/or broadband internet access services to provide reduced tariff options or packages which are lower than those offered to other subscribers under normal commercial conditions, so that consumers on a low income or with special social needs are not prevented from accessing such services, at least at a fixed location, due to affordability issues. The MCA is proposing the following measures to support vulnerable users whilst ensuring affordability.

#### 3.2.1.1 Definition of the Universal Service Obligation

For the past years GO, as the undertaking designated to provide reduced tariff options as a universal service, has been providing a specified reduced 'fixed line rental' tariff scheme to vulnerable subscribers specifically included in a list provided by the responsible Ministry or Government entity. The conditions for the inclusion of the specified list are determined by the responsible Ministry or Government entity. The

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<sup>13</sup> S.L. 399.48, Regulation 72(2)

<sup>14</sup> EECC Recital 219

<sup>15</sup> S.L. 399.48, Regulation 72(3)

<sup>16</sup> Ibid., Regulation 72(4)

<sup>17</sup> Ibid., Regulation 72(5)

MCA considers that this scheme has been achieving successfully one of the objectives of the universal service obligations over the years and is therefore proposing that its provision is maintained.

Moreover, rapid advancements were observed over the years in communication technologies and the extent of digitalisation in society. In particular, broadband internet access service has had a revolutionary impact on communication services in every aspect of life ranging from work and personal interaction to online schooling etc. According to the Regulations the MCA is required to ensure that all consumers, including vulnerable consumers, benefit from an adequate broadband internet access service. The COVID-19 pandemic increased the need for end-users to access communication services including the internet at home or while on the move, and people are relying more on digital services for their daily needs and to stay active in the community.

The EECC states that support may be provided through various forms such as reduced tariff options, special tariff packages, vouchers and direct payments/allowances, so as to render the universal service affordable especially to vulnerable users on low incomes or with special social needs<sup>18</sup>.

#### **Proposed Decision 4**

**The universal service shall include the provision of support to vulnerable users such as those on low income or with special social needs to minimise affordability issues in the provision of voice communications and broadband internet access services to eligible consumers on the basis of specific criteria set by the responsible Ministry or Government entity.**

**Support may be provided through various forms such as reduced tariff options, special tariff packages, vouchers and direct payments/allowances so as to render the universal service affordable to eligible consumers, especially vulnerable users on low incomes or with special social needs.**

**The provision of the existing reduced fixed line rental tariff scheme to vulnerable consumers identified by the responsible Ministry or Government entity on the basis of specific criteria set by the same entity shall be maintained, without prejudice to the provisions in Decision 5.**

#### ***3.2.1.2 Provision of the Universal Service Obligation***

Currently, only GO as the designated undertaking is providing a reduced fixed line rental scheme to vulnerable consumers as part of its universal service obligations. However, the MCA acknowledges that, wherever possible, end-users would normally benefit from a choice of providers when selecting their adequate broadband internet and/or voice communications services, and that this should also apply to vulnerable users and low-income earners.

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<sup>18</sup> European Electronic Communications Code, Recitals 219 and 220

In this context, the Authority considers that it should not exclude any undertakings from expressing their willingness to offer reduced fixed line tariff schemes to vulnerable users through this consultation process. In the meantime, the MCA is proposing that GO should continue to be designated as the universal service provider of a reduced fixed line rental tariff scheme to vulnerable consumers identified by the responsible Ministry or Government entity on the basis of specific criteria set by the same entity. The Authority would consider changing this designation if:

- (a) The Ministry or Government entity implements operational changes to the methodology of the scheme to allow the participation of more providers; or
- (b) A different undertaking expresses willingness to be designated as the universal service provider in this regard whilst demonstrating that there will be no increased administrative or financial burden for other providers or for Government.

In each of the above cases, the Authority would consider carrying out an assessment on the basis of Proposed Decision 18 and would consult as necessary before updating the designation.

One also should take into consideration that from time to time a number of schemes may be introduced to facilitate the uptake and affordability of broadband internet access service by people in need. For example, a number of schemes were introduced over the past couple of years which include:

- A scheme targeting senior citizens who may benefit from a price reduction on electronic communications services;
- A pilot project earmarked for families with low income and social needs which provides beneficiaries with a laptop and a voucher of €300 for internet access service for a period of one year, with the main scope of this project being to address the digital gap and decrease digital inaccessibility;
- Two schemes which provided free internet access service and a device to eligible students to help them with online learning when schools were shut down during the COVID-19 pandemic;
- A scheme targeting post-secondary students with a free internet voucher of €300 for a one-year period to encourage and assist them in their studies; and
- A pilot project to provide students with a laptop and a voucher for free internet service for a period of one year. The aim of this pilot project is to assist students who are struggling in their classes.

The MCA has taken into consideration the above-mentioned schemes and pilot projects currently active and considers that the provision of an adequate broadband internet access service is available to vulnerable users as identified by the responsible entities, and that there is no immediate need to impose further obligations under the universal service regime on existing providers. This is without prejudice to the Government's discretion to extend or modify the scope of schemes in which it is involved.

Undertakings which provide tariff options or packages to consumers with a low income or special social needs under a universal service, are to keep the MCA informed of the details of such offers<sup>19</sup>.

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<sup>19</sup> S.L. 399.48, Regulation 72(6)

### **Proposed Decision 5**

**GO shall continue to be designated as the universal service provider of the existing reduced fixed line rental tariff scheme applicable to vulnerable consumers as per the criteria established by the responsible Ministry or Government entity. The Authority would consider changing this designation if:**

- (a) The Ministry or Government entity implements operational changes to the methodology of the scheme to allow the participation of more providers; or**
- (b) A different provider expresses willingness to be designated as the universal service provider in this regard whilst demonstrating that there will be no increased administrative or financial burden for other providers or for Government.**

**In each of the above cases, the Authority would consider carrying out an assessment on the basis of Decision 18 and it would consult as necessary before updating the designation.**

**On the basis of the various schemes and pilot projects launched to provide an adequate broadband internet access service to vulnerable users, and taking into account that the reduced fixed line rental tariff scheme shall be maintained, the MCA considers that at this stage there is no need for the Authority to impose further obligations under the universal service regime on existing providers of voice communications services and/or broadband internet access services, subject to Government's discretion to extend or modify the scope of schemes in which it is involved.**

**Universal service providers offering tariff options or packages to consumers with a low income or special social needs under a universal service shall keep the MCA informed of the details of such offers.**

### ***3.2.2 Other Specific Measures for Vulnerable Users***

According to the Regulations, the MCA may where applicable, together with a competent public body or bodies and in the light of the national conditions, provide support to consumers with disabilities and take specific measures where appropriate to ensure that consumers with disabilities can enjoy equivalent access to that enjoyed by other consumers, and that adequate broadband internet access and voice communications services are available and provided at an affordable rate<sup>20</sup>.

Also, in line with the Regulations, the MCA may specify certain requirements on providers of voice communications services and/or broadband internet access services for the purpose of ensuring that those on low incomes or with special social needs are not prevented from accessing the network or from using the services falling under the universal service obligations.

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<sup>20</sup> Ibid., Regulation 72(8)

The 2021 USO Decision required GO, as the undertaking designated to provide specific measures for end-users with disabilities, to provide free calls to directory enquiry services for visually impaired persons, and a ‘Telecare’ type of service, to eligible subscribers specifically included in a list provided by the responsible Ministry or Government entity.

### **3.2.2.1 Free Calls to Directory Enquiry Services for Visually Impaired Persons**

#### **3.2.2.1.1 Definition of the Universal Service Obligation**

During the past years, GO as the designated undertaking has provided one free of charge call per week to a directory enquiry service number to eligible visually impaired persons who are included in a list specifically provided by the responsible Ministry or Government entity as part of the universal service obligations.

The MCA is proposing that this supportive measure shall continue to be provided as a universal service obligation.

#### **Proposed Decision 6**

**The universal service shall include the provision of one free of charge call per week to a directory enquiry service number to eligible visually impaired persons who are included in a list specifically provided by the responsible Ministry or Government entity.**

**Details on the eligibility criteria and the form in which this support is to be provided to eligible consumers are to be established by the responsible Ministry or Government entity.**

#### **3.2.2.1.2 Provision of the Universal Service Obligation**

The MCA is proposing that in accordance with the Regulations, this specific measure for the provision of one free call per week to a directory enquiry service number to eligible visually impaired persons shall be offered by all providers of fixed and/or mobile voice communications services to ensure that eligible persons would be able to benefit from this measure, irrespective of their choice of voice communications services provider. If a provider of voice communications services foresees that the number of people using this facility is excessive, to the extent that it requires funding to sustain such a burden, it shall inform the MCA accordingly. The Authority would then decide whether such a list should be capped to a maximum number of people. If this measure is not taken up then a funding option should be considered.



### **Proposed Decision 7**

**All providers of fixed and/or mobile voice communications services are required to provide eligible visually impaired persons with the universal service obligation consisting of one free-of-charge call per week to a directory enquiry service number as defined in Decision 6.**

### ***3.2.2.2 'Telecare' type of service allowing easy access to a specialist emergency call centre***

#### ***3.2.2.2.1 Definition of the Universal Service Obligation***

Another measure to support consumers with disabilities and special social needs is the “Telecare” type of service, which has been provided for a number of years. It includes an alarm unit that automatically dials a specialist emergency call centre once it is activated by vulnerable users, either by a large button on the telephone set, or by means of a button found in a portable pendant worn by the person concerned. Upon receipt of a call, the call centre agents would take care of contacting emergency services and the user’s next of kin. Thus, this service increases the peace of mind to relatives of eligible users, especially consumers with disabilities and elderly persons, who may receive assistance at their private residence in cases of emergency.

For the past years, GO has been designated under the universal service regime to provide the ‘Telecare’ service at a reduced rate to vulnerable subscribers specifically included in a list provided by the responsible Ministry or Government entity.

A universal service provider may collect a nominal deposit for all new ‘Telecare’ subscribers who are not benefiting from the reduced tariff scheme (currently in place for social reasons) and a nominal deposit for misplaced, lost or damaged Customer Premises Equipment (CPE) pendants. However, if the number of misplaced CPEs is high, with the result that the provider is incurring a substantial cost, then the provider shall inform the Authority accordingly. The nominal charge should be reflective of the cost of the ‘Telecare’ pendant, and should either be deducted from any deposit received, or charged directly to the end-user.

The MCA considers that there is no need to impose any additional functionality in relation to this ‘Telecare’ type of service as a universal service obligation.

### **Proposed Decision 8**

**The universal service shall include the provision of a ‘Telecare’ type of service at a reduced rate allowing easy access to a specialist emergency call centre to eligible consumers on the basis of specific criteria set by the responsible Ministry or Government entity.**

**A universal service provider may collect a nominal deposit for all new ‘Telecare’ subscribers who are not benefiting from the reduced tariff scheme.**

**Any misplaced, lost, or damaged ‘Telecare Pendants’ shall be replaced against a reasonable charge that may be levied by a universal service provider, or deducted from any deposit collected, to cover its cost.**

**Details on the eligibility criteria, and the form in which this support is to be provided to eligible consumers are to be established by the responsible Ministry or Government entity.**

#### ***3.2.2.2.2 Provision of the Universal Service Obligation***

Initially the Telecare service was available only to subscribers of one provider of fixed voice communications services, however a few years ago it has become available to subscribers of all fixed voice communications services. The MCA acknowledges that where possible, end-users would normally benefit from a choice of providers when selecting their adequate broadband internet and/or voice communications services, and this should also apply to vulnerable users and low-income earners.

In this context, the Authority considers that it should not exclude any undertakings from expressing their willingness to be part of the reduced tariff scheme and offer Telecare type of service as part of the universal service to ensure affordability to vulnerable users through this consultation process.

The MCA is proposing that in the meantime GO should continue to be designated as the universal service provider of a Telecare type of service at a reduced rate to vulnerable consumers identified by the responsible Ministry or Government entity on the basis of specific criteria set by the same entity. The Authority would consider changing this designation if:

- (a) The Ministry or Government entity implements operational changes to the methodology of the scheme to allow the participation of more providers; or
- (b) A different undertaking expresses willingness to be designated as the universal service provider in this regard whilst demonstrating that there will be no increased administrative or financial burden for other providers or for Government.

In each of the above cases, the Authority would consider carrying out an assessment on the basis of Proposed Decision 18 and it would consult as necessary before updating the designation.

### **Proposed Decision 9**

**GO shall continue to be designated as the universal service provider of the existing Telecare service being offered at a reduced rate to vulnerable consumers as per the criteria established by the responsible Ministry or Government entity and as per Decision 8. The Authority would consider changing this designation if:**

- (a) The Ministry or Government entity implements operational changes to the methodology of the scheme to allow the participation of more providers; or**
- (b) A different provider express willingness to be designated as the universal service provider in this regard whilst demonstrating that there will be no increased administrative or financial burden for other providers or for Government.**

**In each of the above cases, the Authority would consider carrying out an assessment on the basis of Decision 18 and it would consult as necessary before updating the designation.**

### **3.3 Control of Expenditure**

Providers of an adequate broadband internet access service and/or of voice communications services are required to establish terms and conditions that end-users are not obliged to pay for facilities or services which are not necessary or required for the service requested<sup>21</sup>. Furthermore, the MCA recognises the importance of facilities through which end-users may monitor and control their usage<sup>22</sup> and expenditure to ensure continued affordability and avoid any unwanted disconnection of voice communications services and/or of an adequate broadband internet access service<sup>23</sup>. The services and facilities currently being provided under the universal service obligations to help such monitoring and control by the end-user are selective call barring for outgoing calls, and pre-payment facilities. These services are also included in Part A of the Sixth Schedule of the Regulations.

The Authority is also sensitive of industry developments during the past years which should facilitate the monitoring and control of expenditure for a number of end-users subscribed to voice communications services, in particular the proliferation of bundles including minutes of calls to all local fixed and mobile numbers.

In this respect, the Authority considers that existing facilities and services to enable end-users to monitor and control expenditure should be retained as part of the universal service obligations without prejudice to other facilities and services which providers of an adequate broadband internet access service and/or of voice communications services may be required to support on the basis of any other laws or other relevant decisions published by the Authority. The MCA is also proposing a few amendments to the current universal service obligations as detailed hereunder.

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<sup>21</sup> Ibid., Regulation 75(1)

<sup>22</sup> Ibid., Regulation 87(7)

<sup>23</sup> Ibid., Regulation 75(2)

### **3.3.1 Free of Charge Selective Call Barring for Outgoing Calls**

#### **3.3.1.1 Definition of the Universal Service Obligation**

As part of its universal service obligations, the designated undertaking GO is currently required to provide its subscribers with the facility to request to selectively bar all outgoing calls, and calls to particular types of numbers such as mobile calls, international calls and premium rate services, as a means for end-users to control their expenditure on a free of charge basis. The MCA also notes that other providers of voice communications services are providing specific call barring facilities as mandated through other MCA Decisions as in the case of calls to local premium rate numbers and at times also on a voluntary basis.

In this respect, the MCA is proposing that, as a minimum, the universal service obligations shall include the provision to end-users subscribed to voice communications services of a free of charge facility to block all outgoing calls, and also to selectively block calls to local premium rate numbers.

Furthermore, the Authority considers that it would be beneficial for end-users subscribed to voice communications services to also be offered a facility to selectively block outgoing calls to other types of numbers including calls to mobile numbers, calls to international numbers and calls to numbers which are charged at a comparatively higher rate than that applicable for calls to local fixed numbers. Where this facility is offered, it shall be provided free of charge.

#### **Proposed Decision 10**

**Under the universal service regime, end-users subscribed to voice communications services shall, as a minimum, be provided with the free of charge selective call barring facility to block:**

- **outgoing calls\*;** and
- **calls to local premium rate numbers.**

**Furthermore, the Authority encourages that end-users subscribed to voice communications services would also be offered with the free of charge facility to selectively block outgoing calls to other types of numbers including:**

- **mobile calls;**
- **international calls; and**
- **calls to numbers which are charged at a comparatively higher rate than that applicable for calls to local fixed numbers.**

**This decision shall be without prejudice to any other decision or directive however so described published by the MCA extending such obligations to other providers of electronic communications services and/or networks in accordance with the law.**

**\*Calls to access emergency services through '112' and any national emergency number should never be barred. Calls to other "free to caller" numbers should not be barred when technically feasible.**

### **3.3.1.2 Provision of the Universal Service Obligation**

Currently, only GO is designated to provide free of charge selective call barring for outgoing calls as part of its universal service obligations. However, an obligation is already in place for all end-users to be provided with a free of charge call barring facility to block calls to local voice-based premium rate services<sup>24</sup>.

The MCA considers that, wherever possible, end-users should benefit from a choice of providers when selecting their provider of voice communications services. In this respect, the Authority is proposing extending the universal service obligation as per Proposed Decision 10 to all providers of fixed and/or mobile voice communications services.

#### **Proposed Decision 11**

**All providers of fixed and/or mobile voice communications services are required to provide their end-users with a free of charge selective call barring facility for outgoing calls and calls to local premium rate numbers as defined in Decision 10 as part of their universal service obligations.**

**Providers of fixed and/or mobile voice communications services are also encouraged to provide their end-users with the free of charge facility to selectively block outgoing calls to other types of numbers including mobile calls, international calls, and calls to numbers which are charged at a rate comparatively higher than that applicable for calls to local fixed numbers.**

### **3.3.2 Pre-Payment Facilities**

#### **3.3.2.1 Definition of the Universal Service Obligation**

As part of the facilities available for consumers to monitor and control expenditure, the Regulations empower the Authority to require providers of broadband internet access and/or voice communications services to provide, as part of their universal service obligations, a means for which consumers pay for access to the public electronic communications network and use of voice communications services and/or internet access services on pre-paid terms.

Local market developments have led to the availability of various pre-paid mobile plans at rates that are affordable, and this may allow consumers to have more control on their voice communications and/or internet access services expenditure and plan the cost of their bill up-front in order to avoid bill shocks, rather than pay the rent or receive a bill for usage on a periodic basis.

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<sup>24</sup> MCA Decision “A Framework for Premium Rate Services in the ‘5’ Numbering Range”

The MCA considers that such pre-payment facilities should continue to be provided, and is proposing to retain them as a universal service obligation. This measure would ensure that consumers would continue to be offered the facility to pay for access to and use of voice communications services and/or internet access services on pre-paid terms at affordable tariffs on a technology neutral basis.

#### **Proposed Decision 12**

**Under the universal service regime, consumers subscribed to voice communications services and/or an internet access service shall be provided with pre-payment options which allow consumers to access the public electronic communications network(s) and use their voice communications and/or internet access services on pre-paid terms, rather than pay the rent or receive a bill for usage on a periodic basis.**

#### **3.3.2.2 Provision of the Universal Service Obligation**

The Authority is aware that the three largest providers of voice communications services and/or an internet access service already offer various pre-payment options in their product portfolios. In the case of smaller service providers, the Authority acknowledges that investments in new pre-payment facilities and their maintenance may be significant. In this respect, the MCA is considering waiving the provision of pre-payment facilities as a universal service obligation to those providers of broadband internet access and/or voice communications services with a low market share of 5% or less in terms of subscriptions. This approach should lead to a balance as to maintaining the choice of providers available for consumers who make use of pre-payment facilities, without introducing market entry barriers on smaller providers.

#### **Proposed Decision 13**

**As part of its universal service obligations:**

- **each provider of voice communications services having over 5% of such subscriptions in the local fixed and/or mobile market(s) is required to provide pre-payment facilities as defined in Decision 12 in at least one of the markets for voice communications services where its market share in terms of subscriptions exceeds 5%.**
- **each provider of broadband internet access services having over 5% of such subscriptions in the local fixed and/or mobile market(s) is required to provide pre-payment facilities as defined in Decision 12 in at least one of the markets for broadband internet access services where its market share in terms of subscriptions exceeds 5%.**

### **3.4 Existing Universal Service Obligations to be Retained**

The MCA may continue to ensure that the availability and/or affordability of universal services already being provided would be retained when the Authority deems it necessary subject to national circumstances.

#### **3.4.1 Comprehensive Electronic Directory**

To enable the provision of directories and directory enquiry services, Regulation 99(1) of the Regulations specifies that providers of voice communications services which attribute numbers from a numbering plan shall make available the relevant information to providers of directory enquiry services and directories in accordance with an agreed format and on terms which are fair, objective, cost oriented and non-discriminatory. In April 2015, the MCA published a separate decision entitled '*Decision on the Wholesale Access to Data and the Provision of Publicly Available Directory Information Services*' determining the conditions under which an undertaking is required to share subscriber directory information with providers of directory services. These included electronic directories, directory enquiry services, and printed directories. The MCA considers that the provision of the comprehensive electronic directory, which is currently being provided by the designated undertaking GO, shall continue to be provided after taking into consideration the national circumstances of directory enquiry services and directories being provided on the Maltese islands.

In accordance with the relevant data protection rules, this directory information should include details only of those subscribers whose informed consent was given to their provider of voice communications services to release their personal data for directory information services.

##### **3.4.1.1 Definition of the Universal Service**

The provision of a comprehensive electronic directory which includes all subscribers of voice communications services providers is currently being provided as a universal service obligation by GO through its public Internet website. This directory has been available to the general public since 2006 and provides fixed and mobile numbers of all those subscribers consenting to include their personal details for a directory information service.

Due to the significant proliferation of smartphones and internet access, the need arose to easily and promptly have access to the comprehensive electronic directory also whilst on the move. Since in its nature a smartphone has a smaller screen size than a conventional PC, apart from a large-screen web-based interface, the comprehensive electronic directory on GO's website has an interface that is mobile friendly for all smartphone users.

This universal service obligation was again part of the 2021 USO decision and as a result, end-users are currently being provided with a comprehensive electronic directory, accessible by means of an online directory enquiry service, whose interface is mobile friendly, is being updated in real-time whenever technically possible and is free of charge to end-users. The MCA is thus proposing to retain this universal

service obligation considering the national circumstances of directory enquiry services and directories provided on the Maltese islands.

#### **Proposed Decision 14**

**The universal service shall continue to include the provision of a comprehensive electronic directory service free of charge and updated in real-time whenever technically possible, accessible by means of an online directory enquiry service. The comprehensive electronic directory shall, as a minimum:**

- 1. be web-based; and**
- 2. effectively provide the opportunity to easily and promptly look up directory-related data for subscribers of voice communications services in Malta regardless of technology and provider.**

**All voice communications services providers shall ensure that their consenting subscribers' directory-related data is made available, in real-time whenever technically feasible, to the requesting provider authorised with the MCA as an 'Other electronic communications services' provider for the sub-category 'publicly available telephone directories and directory enquiry services', which includes the designated undertaking, for the sole purpose of providing directory information services.**

#### **3.4.1.2 Designation**

Currently the comprehensive electronic directory service is only being provided by GO as the designated undertaking which also already has the technical abilities and competence to do so. The MCA considers that the provision of this particular universal service involves a continuation of an existing service. In this respect, the Authority is proposing that GO, as the incumbent provider of the comprehensive electronic directory, should continue to be the designated undertaking for delivering this universal service obligation. Extending the provision of this universal service obligation to include also other providers of voice communications services could entail a substantial amount of cost to develop, set-up and administer a new service with negligible benefit to the local market.

However, should the MCA receive any justified reasons from the industry not supporting this proposal, the Authority would be amenable to issue a call for expression of interest as described in Section 5 of this document. In default of an expression of interest or in the case when the submitted expressions of interest fail to satisfy the criteria set in the call, the Authority would proceed to designate GO to provide this universal service.

#### **Proposed Decision 15**

**GO shall continue to be designated as the universal service provider of a comprehensive electronic directory service as defined in Decision 14.**



### 3.5 Performance Monitoring and Reporting

A provider designated to provide an eligible end-user with adequate broadband internet access and/or voice communications services, including the underlying connection, at a fixed location in accordance with Proposed Decision 2 would be required to report on the delivery of an adequate broadband internet access service and/or voice communications service under a USO.

Such a designated provider will be required to report annually to the MCA on the:

- type of technology used to provide the broadband internet access service and/or voice communications service to an end-user;
- functional characteristics of the broadband internet access service and/or voice communications service provided to an end-user;
- the supply time for the initial connection to an end-user's premises; and
- type of premises (residential, business, or not-for-profit organisation) connected and their location.

Furthermore, the MCA reserves the right to request any information that may be required from universal service providers on an *ad hoc* basis as the need arises.

Interested stakeholders are invited to provide their feedback on the proposed performance monitoring and reporting required from a provider designated to provide voice communications services at a fixed location.

NOTE: The performance monitoring and reporting requirements for the provision of an adequate broadband internet access service established in the 2021 Broadband Decision are not open for consultation.

**Proposed Decision 16, incorporating Decision 5 of the 2021 Broadband Decision (Document reference MCA/D/21-4417)**

(\* Proposed updates to MCA/D/21-4167 and MCA/D/21-4417 are shown underlined. Decisions established in MCA/D/21-4417 are not open for consultation.)

**A designated provider providing the USO as defined in Decision 1 is required to report annually on the:**

- **type of technology(ies) used to provide the broadband internet access service and/or voice communications service, and the underlying connection, at a fixed location to an end-user;**
- **functional characteristics of the broadband internet access service and/or voice communications service provided to an end-user;**
- **supply time for the initial connection to an end-user's premises; and**
- **type of premises (residential, business, or not-for-profit organisation) connected and their location.**

**Furthermore, universal service providers are required to provide up-to-date information on their performance of the universal service in question when requested by the Authority.**

## 4. TIME PERIOD FOR UNIVERSAL SERVICE PROVISION

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Providers are required to provide the obligations of the universal services as identified in Section 3 of this document until a review of the obligations imposed is deemed appropriate by the MCA in accordance with its regulatory powers and responsibilities, which is notionally set within a period of three (3) years from the publication of the decision.

### **Proposed Decision 17**

**Providers are required to comply with the obligations of the universal services until the Authority deems it appropriate to review the decision according to its powers at law which is notionally set within a period of three (3) years from the publication of this decision.**

## 5. CALLS FOR EXPRESSIONS OF INTEREST

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When the Authority issues a call for expressions of interest to ensure the availability for the provision of a universal service, or an element of the universal service, stakeholders interested in its provision may submit an expression of interest in writing to the MCA by the stipulated date. This procedure would also be applicable should the currently designated undertaking providing the universal service be willing to continue being designated as such. The MCA shall assess all expressions of interest in an efficient, appropriate, objective, transparent, non-discriminatory and proportionate manner<sup>25</sup>, based on the criteria listed hereunder which were already included in the MCA's USO Decision published in 2015, namely:

### **(a) Proven technical competence and expertise**

The EECC specifies that when designating an undertaking, an assessment of the ability of an undertaking to provide all or part of the universal service obligations is required<sup>26</sup>.

When assessing the technical competence and expertise of an undertaking to provide a universal service obligation, the MCA shall take into consideration any past performance in providing the same universal service obligation and the manner in which it was being provided. However, such an undertaking shall not be automatically designated to provide the universal service obligation without giving other potential applicants an opportunity to do so. The MCA shall still assess any expression of interest by any undertaking interested in providing a universal service obligation independently of its experience, as long as the criteria for such a designation are met and satisfied.

### **(b) Willingness to provide the service**

The EECC also specifies that when designating an undertaking, an undertaking's willingness to provide all or part of the universal service obligations shall be taken into account<sup>26</sup>.

As was the case in the past, one needs to take into consideration the likelihood that no potential undertakings would express their interest in providing one or more of the universal service obligations. If this is the case, independent of willingness to provide the service, the MCA is still required to ensure that universal services obligations are made available to the public. To this effect, in default of an expression of interest, the MCA shall be designating an undertaking to be responsible for providing the respective universal service obligation as detailed in Section 3 of this document.

### **(c) Characteristics and conditions**

The MCA shall assess the manner as to how an undertaking would fulfill the obligations of the universal service. A full description as to how the universal service obligation would be provided should be included as part of the expression of interest submitted by interested entities. The MCA may discard any expression of interest that fails to include sufficient detail or understanding of how the universal service obligation will be fulfilled.

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<sup>25</sup> S.L. 399.48, Regulation 73(2)

<sup>26</sup> European Electronic Communications Code, Recital 231

**(d) Network integrity and service continuity**

When designating an undertaking, the Authority shall ensure that the undertaking is committed to ascertain that the integrity of the network (when applicable), as well as service continuity and quality, are maintained during the designation period.

**(e) Cost effectiveness and cost efficiency**

Another criterion which shall be considered when adjudicating expressions of interest is the cost effectiveness<sup>27</sup> and cost efficiency in providing a universal service or an element of the universal service.

The determining factors in assessing cost effectiveness and cost efficiency shall include:

- the pricing of the service including any ancillary fees or charges;
- the extent to which the proposed pricing will cover the net cost of the service; and
- whether the service shall be provided without claims for compensation.

The MCA will expect that, as a minimum, any expressions of interest received will clearly explain how better cost effectiveness and cost efficiency would be achieved as compared to the current provision of universal service.

In its assessment of expressions of interest, the Authority shall seek to minimise market distortions, in particular the provision of services at prices or subject to terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest<sup>28</sup>. In addition, the MCA retains the right to carry out legal, commercial, and/or financial due diligence at its discretion in order to ensure that interested providers can be entrusted with the responsibility to provide the universal service obligation. The assessment of expressions of interest will be carried out in the shortest timeframe possible but not to the detriment of the mentioned designation prerequisites.

**Proposed Decision 18**

**The main criteria for assessing which undertaking shall be designated to provide all or part of the universal service obligations shall be:**

- **Proven technical competence and expertise;**
- **Willingness to provide the service;**
- **Characteristics and conditions;**
- **Network integrity and service continuity; and**
- **Cost effectiveness and cost efficiency.**

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<sup>27</sup> S.L. 399.48, Regulation 73(4)

<sup>28</sup> Ibid., Regulation 73(2)

## 6. COSTING AND FINANCING OF UNIVERSAL SERVICE OBLIGATIONS

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In accordance with the Regulations, where the provision of universal service obligations mentioned in sub-sections 3.1, 3.2 and 3.4 of this document may represent an unfair burden on the providers of all or part of the universal service obligations, these providers may seek to receive compensation for the net costs incurred for such provision.

A universal service provider may submit to the Authority a written request for compensation with detailed information supporting its claim. This claim should be presented in a way that would enable the MCA to determine whether the provision of the universal service obligations has actually resulted in an unfair burden on the provider<sup>29</sup>.

### 6.1 Time Period for Requesting Compensation

In the 2021 USO Decision, the MCA had established a timeframe by when a request for compensation must be submitted in order to avoid any commercial and legal uncertainty. The MCA is proposing to retain the same time period that by not later than eleven months following the end of the financial year, a universal service provider may submit a written request to the Authority requesting compensation for the net costs it contends that it suffered in providing the universal service obligations.

Any requests for compensation shall only cover the previous financial year and may not include any prior periods.

#### **Proposed Decision 19**

**Any request for compensation shall be received in writing by the MCA by not later than eleven months following the end of the said financial year. The relevant period of assessing a request for compensation shall be the most recent completed financial year of the universal service provider.**

### 6.2 Provision of Information in the Request for Compensation

A universal service provider wishing to submit a request for compensation shall provide the MCA with sufficient and detailed evidence to substantiate its claim that the provision of a universal service obligation has resulted in the calculated financial unfair burden. When claiming for the net costs arising from the various components of the universal service obligations, any market benefits accrued by the universal service provider shall also be taken into account. The requirements as set in the Seventh Schedule of the Regulations are to be followed.

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<sup>29</sup> Ibid., Regulations 76(1), 76(2) and 76(3)

The MCA reserves the right to reject any claim for compensation which is inadequately substantiated, and to request any other information, or more detail than that submitted in the claim by the universal service provider, if it deems it necessary to be in a position to reach its decision.

#### **Proposed Decision 20**

**The universal service provider requesting compensation shall provide the MCA with sufficient and detailed evidence supporting the claim that it has suffered an unfair burden in the provision of the universal service obligations.**

**This evidence shall include a consideration of net costs and any market benefits accrued to the provider as a result of the universal service obligations being provided, as set in the Seventh Schedule of the Regulations.**

**The burden of proof for each universal service obligation shall rest with the said provider.**

### **6.3 Compensation Request Evaluation**

Once a claim for compensation for the provision of universal service obligations is received within the established timeframe as stipulated in sub-section 6.2 above and including all the supporting evidence, the MCA, or an appointed independent body, shall initiate a verification or audit process to assess and determine whether the amount claimed is justified and was incurred in order to provide universal service obligations outside normal commercial conditions. Any market benefits accrued by the universal service provider shall also be included in the claim, as specified in more detail in Part A of the Seventh Schedule of the Regulations.<sup>30</sup> The results of the cost calculation and the conclusions of the verification or audit shall be made publicly available.

The evaluation process shall consist of two phases namely:

- (1) A Reasonability Phase; and
- (2) A Calculation Accuracy Phase.

#### **6.3.1 Reasonability Phase**

The objective of this phase is to analyse the validity of the reasoning that the universal service provider has used to support its claim, and assesses the following elements:

- the grounds on which the claim for compensation are based;
- whether the claim is coherent with regulatory principles;
- the extent to which the claimed compensation is attributed to universal service obligations; and
- the approach used to quantify the intangible benefit aspect.

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<sup>30</sup> Ibid., Regulations 76(2) and 76(3)

### **6.3.2 Calculation Accuracy Phase**

This phase only applies if, and to the extent that, the outcome of the Reasoning Phase deems the reasons behind the claim for compensation as valid.

The Calculation Accuracy Phase shall include an auditing or a verification exercise on the various calculations used in the claim submitted by the universal service provider. This would include a calculation exercise in order to establish that the inputs and workings used to quantify the net costs to provide the universal service obligation in question are accurate.

The net cost of the universal service obligation is calculated as the difference between the net cost a universal service provider incurred to provide a service with the universal service obligation, as opposed to operating the service without the universal service obligation. Any intangible benefits enjoyed by the universal service provider shall also be taken into account<sup>31</sup>.

## **6.4 Source of funding**

If, following the evaluation process, a universal service provider is found to have suffered an unfair burden, the source of funding to compensate for the net costs shall be decided on a case by case basis, depending on the nature of the universal service obligation in question.

As established in the Regulations the source of funding for the provision of universal service obligations in sub-sections 3.1, 3.2 and 3.4 shall be one, or a combination, of the following options<sup>32</sup>:

- from public funds with the approval of the government; and/or
- by means of a sharing mechanism between providers of electronic communications networks and/or services.

A sharing mechanism, if required, should be set up on the basis of transparency, least market distortion, non-discrimination and proportionality, and be subject to the principles of Part B of the Seventh Schedule of the Regulations. Given that to date the main cost component for the provision of universal service obligations has emanated from social tariffs, the financing has been sourced from public funds in the case of past claims.

The MCA would like to reiterate that the element of source of funding for the provision of universal service obligations is addressed by means of a separate consultation, as was the case in previous years.

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<sup>31</sup> Ibid., Part A of the Seventh Schedule of the Regulations

<sup>32</sup> Ibid., Regulation 77(1)

## **7. APPLICABILITY OF MCA'S FINAL DECISION NOTICE**

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The MCA recognises that some of the proposed decisions will require universal service providers to implement internal administrative, technical and/or operational updates. In this regard, the MCA considers that the new requirements that would arise from the proposed decisions contained in this consultative document shall become applicable within two (2) months from the date of publication of the Decision Notice, at which point all providers will be required to adhere with the new norms as reflected in the final MCA decision.

In the meantime, until the date when the new final MCA decision comes into force, the MCA's 2021 USO Decision and 2021 Broadband Decision shall remain effective and applicable along with any other requirements arising from any other applicable legislation and decisions however so described.



## 8. SUBMISSION OF RESPONSES

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In accordance with its obligations under Article 4A of the Malta Communications Authority Act [Cap. 418 of the Laws of Malta], the Authority welcomes written comments and representations from interested stakeholders during the consultation period which shall run from the 24<sup>th</sup> June 2022 until 5<sup>th</sup> August 2022.

The Authority appreciates that respondents may provide confidential information in their feedback to this consultation document. This information is to be included in a separate annex and **should be clearly marked as confidential**. Respondents are also requested to state the reasons why the information should be treated as confidential. The Authority will take the necessary steps to protect the confidentiality of all such material as soon as it is received at the MCA offices in accordance with the MCA's confidentiality guidelines and procedures<sup>33</sup>. Respondents are however encouraged to avoid confidential markings wherever possible.

The Authority will, after taking into consideration the responses received to this consultation, publish a Decision Notice updating the universal service obligations in Malta. For the sake of openness and transparency, the MCA will publish a list of all respondents to this consultation in the ensuing Decision Notice.

All responses should be submitted in writing to the Authority, by post or e-mail, by no later than 12:00 CEST on the 5<sup>th</sup> August 2022 and be addressed to:

Chief of Operations  
Malta Communications Authority  
Valletta Waterfront, Pinto Wharf,  
Floriana FRN1913  
Malta

Tel: +356 2133 6840  
Email: [coo@mca.org.mt](mailto:coo@mca.org.mt)

Extensions to the consultation deadline will only be permitted **in exceptional circumstances and where the Authority deems fit**. The MCA reserves the right to grant or refuse any such request at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period. Subsequent requests will not be considered.

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<sup>33</sup> [https://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL\\_0.pdf](https://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf)