

DECISION NOTICE

UNIVERSAL SERVICE OBLIGATIONS ON ELECTRONIC COMMUNICATIONS SERVICES

Response to Consultation and Decision

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1 Executive Summary

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 end-users. The Authority is required by national legislation to ensure that an adequate broadband internet access service and voice communications services at the specified quality, including the underlying connection, at a fixed location are made available at affordable prices to all consumers in the Maltese Islands, in the light of national conditions and independently of geographic location. 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 11th 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”)¹. In March 2021, the MCA 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 which took 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 1st of October 2021². The 2021 USO Decision no longer imposed 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, and 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.

In June 2022, the MCA published a consultation and proposed decision entitled ‘Review of Universal Service Obligations on Electronic Communication Services, Consultation and Proposed Decision’ (Document reference MCA/C/22-4595, hereinafter referred to as “2022 USO Consultation”) with the scope of redefining certain universal service obligations following

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

² Reference to LN 377, 378 and 379 of 2021 published on the 1st of October 2021.

the transposition of the EEC into national law. The provisions of the 2021 Broadband Decision were also reproduced for information purposes and for the sake of completeness only, as they were already the subject of a separate consultation process and the MCA is not re-visiting the provisions of the 2021 Broadband Decision through this Decision Notice (hereinafter referred to as “2023 ECS USO Decision”). Any future updates that may be introduced to the provisions of the 2021 Broadband Decision will, when introduced, also be reproduced in the relevant sections of the 2023 ECS USO Decision Notice.

The consultation period for the 2022 USO Consultation ran between the 24th June 2022 and the 5th August 2022 and feedback was received from Epic Communications Ltd, GO plc and Melita Ltd. The MCA acknowledges all respondents for their contributions and is including a summary of the feedback received in each of the respective section of this Decision Notice.

Through this 2023 ECS USO Decision Notice, the universal service regime in Malta is being updated in respect of the following universal service obligations:

- Provision of 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.

The revised universal service obligations shall come into effect as per Chapter 8 – Applicability of MCA’s Decision Notice of this document.

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 will subsequently evaluate the information submitted to determine whether an unfair burden really exists.

2 Introduction

2.1 Universal Service Obligations

In the electronic communications services sector, a universal service is defined as a safety net to ensure that at least the minimum services are available to all end-users and at an affordable price to consumers, where a risk of social exclusion arising from the lack of such availability prevents citizens from full social and economic participation in society³. 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 the universal service obligations.

The MCA 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, where applicable together with any competent public body, take measures as it considers appropriate to ensure that support is provided to consumers with low income or special social needs for communication purposes, or to require providers of such services to offer special tariff options and/or packages, or both. In exceptional cases, the MCA may designate an undertaking to offer these special tariff options.⁴

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 an 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 services 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 will subsequently evaluate the information submitted by the undertaking to determine whether an unfair burden really exists.

The universal service regime in Malta has evolved over the years as defined in various Decision Notices published by the Authority. In particular, the Decision entitled 'Review of Universal Service Obligations on Electronic Communication Services, Response to Consultation and Decision', the 2021 USO Decision, was published by the MCA in March 2021 as an interim decision before the EECC was transposed into national legislation, and the Decision entitled 'Broadband as a Universal Service – Ensuring the availability of an adequate

³ European Electronic Communications Code, Recital (212)

⁴ SL 399.48, regulation 72

broadband internet access service, including the underlying connection, at a fixed location', the 2021 Broadband Decision, was published by the Authority in October 2021. The universal service obligations as defined through those Decisions included:

- 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.

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 Malta⁵, on the 24th June 2022 the MCA published the 2022 USO Consultation which included proposals on redefining the universal service obligations in line with national legislation, and identifying the universal service providers. The provisions of the 2021 Broadband Decision were also reproduced as part of the new proposed decisions in the 2022 USO Consultation for information purposes and for the sake of completeness only⁶. The Authority is hereby publishing its Decision Notice updating the regime for universal service obligations on electronic communications services in Malta.

2.2 Responses to the Consultation

The consultation period ran between the 24th June 2022 and the 5th August 2022. Responses were received from the following three local providers of electronic communications networks and services:

- Epic Communications Ltd.
- GO p.l.c.
- Melita Ltd.

⁵ 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 (SL 399.28) was repealed by LN 379 of 2021 and replaced by SL 399.48 with effect from 1st October 2021.

⁶ The Authority did not re-consult on the provisions of the 2021 Broadband Decision which were already the subject of a separate consultation process. It is pertinent to note that the Authority is not re-establishing any of the provisions of the 2021 Broadband Decision through this Decision Notice. Any future updates that may be introduced to the provisions of the 2021 Broadband Decision will, when introduced, also be reproduced in the relevant sections of this 2023 ECS USO Decision Notice.

The MCA wishes to thank all three respondents for their constructive feedback. Due to potential business sensitive information, the Authority is refraining from associating particular comments with any specific respondent.

2.3 Structure of the Document

The rest of this 2023 ECS USO Decision Notice is structured as follows:

The **Legal Basis** for universal service obligations on electronic communications services in Malta is presented in Chapter 3. Next, Chapter 4 – **Universal Service Obligations** includes a discussion on the feedback received on the proposed decisions in the 2022 USO Consultation, and establishes the updated regime for universal service obligations on electronic communications services in Malta. Chapter 5 - **Time Period for Universal Service Provision**, establishes the time period during which providers are required to comply with the identified universal service obligations. This is followed, in Chapter 6, by an overview of the procedure to be followed when **Calls for Expression of Interest** are issued to designate an undertaking as a universal service provider and the main criteria to be adopted for the ensuing assessment. Chapter 7 presents various aspects related to **Costing and Financing of Universal Service Obligations**. Lastly, Chapter 8 - **Applicability of MCA's Decision Notice** outlines the implementation timeframe envisaged for the updates in this Decision Notice.

3 Legal Basis

Article 4(3) of the Malta Communications Authority Act, CAP. 418 (hereinafter referred to as “the MCA Act”), establishes that the MCA is entitled to enforce, regulate, monitor, and keep under review all practices, operations and activities being regulated, and to carry out any studies, research or investigation of any matters regulated by or under the MCA Act. This article of the MCA Act also establishes that the MCA shall promote the interests 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, SL 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”.

Part X of the Regulations entitled “Universal Service Obligations” details the powers that the MCA has in relation to the provision of universal service obligations. Regulation 71 of the Regulations describes the requirements for the provision of an adequate broadband internet access service and voice communications services at specified quality and at affordable rates, including the underlying connection, at a fixed location. In this regard the MCA is empowered to ensure affordability of an adequate broadband internet access service 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 further stipulates that the MCA defines a minimum bandwidth for an adequate broadband internet access service capable at least to support the minimum set of services outlined in the Fifth Schedule of the Regulations, this in the light of national conditions and the minimum bandwidth enjoyed by the majority of consumers in Malta, whilst also taking into account the BEREC report on best practices made in accordance with Article 84(3) of the EECC. The law further states that consumers should also be provided, upon request, with the option to choose to have access solely to support voice communications services. The MCA 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 MCA monitors retail prices of adequate broadband internet access services and voice communications services 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 MCA is empowered, 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 MCA may require such

providers to apply common tariffs, including geographic averaging, throughout Malta. In exceptional circumstances, the MCA may impose the obligations emanating from this regulation only on designated undertaking(s), in particular if the introduction of such obligations on all providers of broadband internet access services and/or voice communications services would result in excessive administrative or financial burden for providers or for Government. The MCA 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 MCA considers 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, then the MCA may impose appropriate universal service obligations to meet all reasonable requests by end-users for accessing those services in the relevant parts of Malta. In doing so, the MCA is required to determine the most efficient and appropriate approach for ensuring the availability at a fixed location of an adequate broadband internet access service and of 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 may also apply in exceptional circumstances where the MCA designates undertaking(s) to address the obligations established in regulation 72.

In accordance with regulation 74 of the Regulations, the MCA may continue to ensure the availability or affordability of services other than an adequate broadband internet access service and voice communications services at a fixed location. If the continuation of existing universal services is considered necessary, the MCA may designate undertaking(s) in part(s) or all of Malta for the provision of such services and in accordance with the designation provisions in regulation 73 of the Regulations. The MCA is also required to review the obligations imposed on universal service provider(s) as identified through regulation 74 and every three (3) years thereafter.

Regulation 75 of the Regulations establishes that providers of broadband internet access services 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 not required for the service requested. Providers of broadband internet access services 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 so that consumers can monitor and control their expenditure. The MCA may extend the scope of this regulation to apply 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 universal services. When the MCA considers that the provision of such services may

represent an unfair burden on the providers of broadband internet access services and/or voice communications services responsible for the provision of all or part of the universal services as set out in regulations 71 to 74 of the Regulations, then it is required to calculate the net cost of such provision. Universal service providers may request compensation by submitting a detailed written request to the MCA including accounting calculations and other information to prove the unfair burden. Based on the net cost calculation, when the MCA finds that a universal service provider is subject to an unfair burden, the MCA may introduce a mechanism to compensate that provider from public funds, or else share the net cost of the universal service obligations between the providers of electronic communications networks and 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 empowers the MCA to introduce additional universal service obligations in Malta provided the compensation mechanism does not involve specific undertakings.

4 Universal Service Obligations

This Chapter brings together the Decisions which identify the universal service obligations related to the provision of electronic communications services in Malta and specify the undertaking(s) who would be acting as universal service provider(s) for each of these universal service obligations. The MCA's rationale is presented for each Decision, together with a discussion of any respective feedback received during the consultation period.

4.1 Access to an Adequate Broadband Internet Access Service and Voice Communications Services at a Fixed Location

4.1.1 Definition of the Universal Service Obligation

4.1.1.1 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 service⁷ and to voice communications services⁸ at the quality specified, including the underlying connection at a fixed location, which are to be complied by providers of broadband internet access services and/or voice communications services, which are in exceptional cases designated to ensure availability in the relevant parts of Malta.

In the 2022 USO Consultation, the MCA reproduced the provisions established in the 2021 Broadband Decision as part of the new proposed decisions for the voice communications services element for information purposes and for the sake of completeness only. In that (2022 USO) Consultation only the part related to voice communications services was subject to the consultation process since the aspects related to an adequate broadband internet access service had already been addressed in a separate consultation process. In this 2023 ECS USO Decision Notice, the MCA is maintaining the approach adopted in the 2022 USO Consultation such that Decisions 1 to 3 extend the provisions established in the 2021 Broadband Decision in relation to an adequate broadband internet access service to include also aspects related to voice communications services. It is pertinent to note that the MCA is not re-establishing any of the provisions of the 2021 Broadband Decision through this Decision Notice. Any future updates that may be introduced to the 2021 Broadband Decision will, when

⁷ 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".

⁸ In accordance with Article 2 of the Act, the term "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".

introduced in that Decision, also be reproduced in the relevant sections of this 2023 ECS USO Decision Notice.

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 being excluded from the digital society. At present, 88%⁹ 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 Mbps¹⁰. Nevertheless, there may be exceptional cases when an end-user might not be able to subscribe to voice communications services and/or an adequate broadband internet access service 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 would 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.

4.1.1.2 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'¹¹, on best practices published in accordance with Article 84(3) of the EECC, 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

⁹ Digital Economy and Society Index (DESI), Malta 2022 at <https://digital-strategy.ec.europa.eu/en/policies/desi-malta>

¹⁰ 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-q1-2018-q3-2022>

¹¹ In line with the EECC [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.

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 BEREC report aims to contribute towards the consistent application of the EECC 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'.¹² 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 assist in the definition of an adequate broadband internet access service under 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:

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

The 2021 Broadband Decision establishes the functional characteristics of an adequate broadband internet access service. 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).

¹² 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, 10th January 2011.

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 (see European Commission communications on a Gigabit Society and 5G Action Plan on 1st 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 being reproduced as part of this 2023 ECS USO Decision Notice **strictly** for information purposes and for the sake of completeness only.

4.1.1.3 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 service 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 available adequate broadband internet access service 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 an adequate broadband internet access service 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 service and/or voice communications services. Taking into consideration the coverage of high-speed broadband technologies across Malta there are only very few cases where an end-user may not be able to subscribe to an adequate broadband internet access service 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 service 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 service 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.

NOTE: The availability of an adequate broadband internet access service established in the 2021 Broadband Decision is being reproduced as part of this 2023 ECS USO Decision Notice **strictly** for information purposes and for the sake of completeness only.

4.1.1.4 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 service and/or 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 service and/or voice communications services on an existing network that meet or exceed the defined minimum functional characteristics (whether provided through wired or wireless technologies, such as services provided over mobile networks) are not available to that location.

Only premises which are permanent legal residential (home), 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 service 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 service and/or voice communications services 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 communications services or an adequate broadband

internet access service at a fixed location as a standalone service without the requirement to subscribe to any other electronic communications service.

NOTE: The eligibility considerations of an adequate broadband internet access service established in the 2021 Broadband Decision are being reproduced as part of this 2023 ECS USO Decision Notice **strictly** for information purposes and for the sake of completeness only.

4.1.1.5 Summary of Respondents' Views and MCA Comments

One of the respondents stated that whilst in general it agrees that connections which provide adequate broadband internet access and voice communications services are available across Malta, however the cost to provide a fixed connection to the few areas not covered by a fixed electronic communications network are disproportionately high when compared to areas that are already covered by an electronic communications network. Another respondent remarked that if an area is not serviced by a provider, such provider should not incur infrastructure costs to provide the service if this would be technically and economically unfeasible.

The MCA would like to point out that in those exceptional cases when an eligible end-user notifies the MCA of his/her inability to secure an adequate connection with one of the existing providers, the MCA will follow the designation process described in sub-section 4.1.2. In summary, the MCA will 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 service and/or voice communications services that meet or exceed the defined minimum functional characteristics under normal commercial conditions. If none of the providers expresses interest, or those who express interest fail to satisfy the criteria set by the MCA, then the MCA would proceed to designate an existing service provider best suited to deliver the USO, taking into account the closest available broadband network (whether provided through wired or wireless technologies, such as services provided through mobile networks) to the end-user's premises.

With regard to potential costs incurred by universal service providers, in the 2022 USO Consultation the MCA maintained its stance of not including the application of a standard connection fee since there could be extraordinary circumstances where a higher connection charge could be justifiable. This is consistent with the approach adopted by the MCA subsequent to its USO Decision of 2010. Conditions associated with unfair burden are delineated in Chapter 7 – Costing and Financing of Universal Service Obligations below.

One of the above-mentioned respondents also welcomed the proposed introduction of flexibility so that the designated provider can provide the connection through wireless technologies, such as services provided over mobile networks. This respondent mentioned that the provision of the services through wireless technologies in areas where the connections provided over such technologies meet the universal service functional characteristics for broadband internet access service and/or voice communications services, would significantly reduce the cost and reduce waiting time for customers. The MCA appreciates the positive feedback received and considers that such flexibility is laudable when factoring the principle of technology neutrality, and subject that the functional characteristics for an adequate

broadband internet access service and/or voice communications services at a fixed location as defined in Decision 1 can be satisfied.

The same respondent further mentioned that whilst fixed broadband products are currently available in the market on a standalone basis, fixed voice wireless solutions are not. Fixed voice services provided through wireless technologies are only available in bundle products which include the broadband service. In this regard, the respondent pointed out that sub-section 3.1.3 of the 2022 USO Consultation mentioned that there will be no constraints on the technical means by which an adequate broadband internet access service and/or voice communications services are provided by universal service providers. However, the example provided on wireless technologies only referred to *“those services provided over mobile networks when used to access broadband at a fixed location”*. Given the substantial reduction in cost and supply time to provide voice communications services over mobile technology, this respondent requested further clarification on whether standalone voice services can be provided through mobile technology without necessarily having the underlying connection capable of the functional characteristics of a broadband connection.

The MCA notes that the example referred to in sub-section 3.1.3 of the 2022 USO Consultation was included for illustrative purposes and was not meant to be exhaustive. In this context, the MCA would like to clarify that voice communications services at a fixed location may also be provided using wireless technologies, subject that:

- (a) the functional characteristics for voice communications services as defined in Decision 1 would be satisfied, (i.e. capability to allow end-users to make and receive local and international calls); and
- (b) the voice communications services in question would adhere to all regulatory requirements applicable to fixed voice communications services. Such regulatory requirements include, but are not limited to, the assignment of numbers from the ‘2’ numbering range designated for fixed voice communications services, the application of the fixed voice termination rate at a wholesale level for the termination of incoming voice calls, compliance with fixed number portability requirements, and adherence to any applicable quality of service requirements for fixed voice communications services.

In the case of the provision of standalone voice communications services at a fixed location, (regardless of whether the standalone voice communications services are provided through wired or wireless technologies), there is no specific requirement for the underlying connection to satisfy the functional characteristics of an adequate broadband internet access service specified in sub-section 4.1.1.2 and Decision 1, subject that the requirements outlined in (a) and (b) above in this sub-section are satisfied.

After taking into consideration the feedback received, the MCA maintains its position as proposed in the 2022 USO Consultation and no changes are considered necessary by the MCA to Proposed Decision 1.

Decision 1 ¹³

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 is no existing provider of public electronic communications networks who is in a position to provide connection at a fixed location to the end-users at an affordable price.

Such a connection must enable:

- (a) voice communications services, including the capability to allow end-users to make and receive local and international calls; and
- (b) 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 service and/or 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 service and/or voice communications services on an existing network that meet or exceed the defined minimum functional characteristics (whether through wired or wireless technologies, such as services provided over mobile networks) are 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 subscribe to any other electronic communications service.

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

¹³ The provisions of the 2021 Broadband Decision are reproduced as part of this 2023 ECS USO Decision Notice strictly for information purposes and for the sake of completeness only. The Authority is not re-establishing the provisions of the 2021 Broadband Decision through this Decision Notice. Any future updates that may be introduced to the provisions of the 2021 Broadband Decision will, when introduced, also be reproduced in the relevant sections of this 2023 ECS USO Decision Notice.

4.1.2 Designation

In those exceptional cases when an end-user notifies the MCA of his/her inability to secure an adequate connection 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 Decision 1. If an end-user is eligible for an adequate broadband internet access service 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 service and/or voice communications services, that meet or exceed 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 voice communications services to the premises of an eligible end-user.

Even though requests for an adequate broadband internet access service and/or voice communications services under a USO are exceptional, the MCA must still consider the possibility either that no provider is willing to provide an eligible end-user with an adequate broadband internet access service and/or voice communications services, 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 services, or alternatively if the provider does not satisfy the criteria set in the written request by the MCA, then a practical and effective solution is to designate an existing provider best suited to deliver the USO, taking into account 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. 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 MCA to base its decision on information made available by the provider(s) concerned. In 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 area¹⁴.

NOTE: The designation process for the provision of an adequate broadband internet access service established in the 2021 Broadband Decision is being reproduced as part of this 2023 ECS USO Decision Notice **strictly** for information purposes and for the sake of completeness only.

4.1.2.1 Summary of Respondents' Views and MCA Comments

A respondent stated that given it is not the incumbent in the market, it is in a less privileged position and even though it has similar coverage patterns to the incumbent, due to legacy, it

¹⁴ 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").

is not in the same advantageous position to balance out or at least reduce slightly the burden of the necessary costs involved when it comes to reach specific geographical areas. This respondent also mentioned that the availability issues can lead to disproportionate and often unjustifiable costs which an operator would need to incur to reach a particular location. Nevertheless, there are only few clusters of homes that would not fall within the standard cost distribution, and it may be necessary to come up with customised solutions, with some limitations to facilitate deployment. The same respondent added that these few cases would be in areas that are not only difficult and time consuming to reach, but also may require for example permits to raise poles in the countryside and digging or boring. It is likely that for some of these cases the necessary permits would be challenging to obtain. This respondent remarked that it has a technology neutral position to reach customers across Malta and this applies irrespective of the location.

The same respondent also explained that whilst it understands the national obligation to ensure the availability of an adequate broadband internet access service to the end-users, it considers that it should propose an alternative solution which would ultimately be more beneficial to the end-users and to overcome the geographic limitations. This respondent suggested that a government agency, such as Infrastructure Malta, could undertake the implementation of the necessary civil works infrastructures (such as the trenches, aerial works, boring, etc.). This proposal ties in with the point made above by this respondent in relation to the relevant permits. If a government agency were to undertake such works, the respondent is of the opinion that it would allow the operators in the market to reach these end-users at more manageable costs. This respondent also expressed its views that although operators would still have to handle the aspect of maintenance costs and works, however, this would mean that the operators are not forced to carry the full burden whilst all operators are possibly in a position to provide services to remote end-users, ensuring more choice for the end-users.

The MCA agrees with the view expressed by this respondent that there are only a few clusters of residences/premises for which the availability of an adequate broadband internet access service and/or voice communications services cannot be ensured through market forces. Furthermore, Decisions 1 to 3 of this 2023 ECS USO Decision Notice include various provisions which should facilitate the provision of access to an adequate broadband internet access service and/or voice communications services, including the underlying connection, at a fixed location. In particular, universal service providers are allowed to implement solutions based on both wired and wireless technologies (such as services provided over mobile networks) to reach the end-users' premises. Furthermore, in cases where the MCA is to designate an undertaking for the provision of this universal service in accordance with Decision 2 hereunder, the MCA would then take into account the public electronic communications networks closest to the end-user's location in order to reduce the burden on the designated provider. Moreover, Decision 3 below establishes that the maximum period of thirty (30) calendar days might not be sufficient in justified circumstances due to technical considerations or issues related to the deployment of infrastructure. Aspects related with the costs for the provision of this universal service are addressed in the MCA's comments provided in sub-section 4.1.1.5 above.

With regard to the text in the first paragraph of Proposed Decision 2 which states that “MCA shall also request information on the provider’s (fixed) broadband networks deployed in the relevant area”, the same respondent sought a clarification on what additional information shall be requested given it already provides information in relation to network coverage and related information to the MCA.

The MCA would like to clarify that at the time of the publication of the 2022 USO Consultation and this 2023 ECS USO Decision Notice, the MCA is not yet collecting data on the geographical mapping and network coverage from service providers in accordance with regulation 17 of the Regulations (transposing Article 22 of the EECC). Once this data would be available, the MCA should have more information on providers’ (fixed) broadband networks in specific areas in hand. This should significantly reduce the need for the MCA to seek related information when issuing a written request for interest if it is necessary to designate an undertaking for the provision of access to an adequate broadband internet access service and/or voice communications services, including the underlying connection, at a fixed location. If an undertaking needs to be designated before data on geographical mapping and network coverage is collected by the MCA, service providers would be requested to provide broadband network information on the area in question that would permit the MCA to identify the service provider best suited to deliver the USO taking into account the closest network to the end-user’s premises.

After taking into consideration the feedback received, the MCA retains its position as proposed in the 2022 USO Consultation and no changes are considered necessary by the MCA to Proposed Decision 2.

Decision 2 ¹⁵

If an eligible end-user requests the support of the MCA, the MCA 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 service and/or voice communications services, that meet or exceed 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.

¹⁵ The provisions of the 2021 Broadband Decision are reproduced as part of this 2023 ECS USO Decision Notice strictly for information purposes and for the sake of completeness only. The Authority is not re-establishing the provisions of the 2021 Broadband Decision through this Decision Notice. Any future updates that may be introduced to the provisions of the 2021 Broadband Decision will, when introduced, also be reproduced in the relevant sections of this 2023 ECS USO Decision Notice.

4.1.3 Provision of the Universal Service Obligation

In delivering the USO, the MCA expects the designated universal service provider to supply the broadband internet access service 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 service 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 service 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 and/or voice communications services 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 service 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 service and/or voice communications services at a fixed location. In delivering the USO, an undertaking would be required to provide the broadband internet access service 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 end-users. An end-user would be required to subscribe to, and pay, for a broadband internet access service and/or voice communications services package. An end-user should not be required to pay more than for equivalent broadband internet access service and/or voice communications services provided in other parts of Malta. Nevertheless, in line with the approach adopted by the MCA subsequent to its USO Decision of 2010, 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 over the past years 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 service and/or voice communications services, their relationship will be one of a normal customer's relationship with the retail provider.

NOTE: The provisioning of an adequate broadband internet access service established in the 2021 Broadband Decision is being reproduced as part of this 2023 ECS USO Decision Notice **strictly** for information purposes and for the sake of completeness only.

4.1.3.1 Summary of Respondents' Views and MCA Comments

A respondent agreed with the MCA's view that there can be circumstances that make it difficult to provide the service within a maximum period of thirty (30) days and that there could be circumstances where due to the costs to connect the end-user, a higher connection fee could be justifiable. This respondent also mentioned that when providing connections in areas not adequately covered by current electronic communications networks, an electronic communications provider may incur significant civil engineering costs or costs associated with mobile signal amplification equipment. Designated providers should be able to recover these costs such that they are not subject to an unfair burden.

The MCA notes that there could be justified exceptional circumstances due to technical considerations or issues related to the deployment of infrastructure where the supply and provision of an adequate broadband internet access service and/or voice communications services by the designated undertaking may require additional time over and above the thirty (30) calendar day period set in Decision 3.

Furthermore, a designated undertaking is required to offer broadband internet access service 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. In this respect, as also referred to earlier in this document, a standard connection fee is not being included by the MCA in this Decision Notice as there could be circumstances where a higher connection charge could be justifiable.

After taking into consideration the feedback received, the MCA retains its stance as proposed in the 2022 USO Consultation and no changes are considered necessary to Proposed Decision 3.

Decision 3 ¹⁶

A designated undertaking is required to offer the broadband internet access service 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 service 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 service 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 designated undertaking 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 service and/or voice communications services, their relationship will be one of a normal customer's relationship with the retail provider.

4.2 Support to Consumers with a Low Income or Special Social Needs

In accordance with the Regulations, the MCA 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, or both¹⁷. Support may also be provided in other forms such as part of social allowances, vouchers, or direct payments¹⁸.

¹⁶ The provisions of the 2021 Broadband Decision are reproduced as part of this 2023 ECS USO Decision Notice strictly for information purposes and for the sake of completeness only. The Authority is not re-establishing the provisions of the 2021 Broadband Decision through this Decision Notice. Any future updates that may be introduced to the provisions of the 2021 Broadband Decision will, when introduced, also be reproduced in the relevant sections of this 2023 ECS USO Decision Notice.

¹⁷ SL 399.48, regulation 72(2)

¹⁸ European Electronic Communications Code, Recital (219)

Providers of voice communications services 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 MCA may then decide to impose the obligation to offer specific social tariff options only on designated undertakings¹⁹. Where the MCA 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 ensuring such choice is considered impossible or would create an excessive additional organisational or financial burden²⁰. 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 avoided²¹.

4.2.1 Social Tariffs or Direct Allowances

As stated above, the MCA may require providers of voice communications services 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 including the following measures to support vulnerable users whilst ensuring affordability.

4.2.1.1 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 eligibility criteria for the inclusion of subscribers in the specified list are determined by the responsible Ministry or Government entity. The MCA considers that this scheme has been successfully achieving one of the objectives of the universal service obligations over the years and is therefore maintaining this provision.

Moreover, rapid advancements were observed over the years in communication technologies and 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. People are nowadays relying more on digital services even for their daily needs due to various factors which increase the need for end-users to access communications services to stay active in the community including the use of internet both at home and on the move. According to the Regulations, the MCA is required to ensure that all consumers, including vulnerable consumers, benefit from an adequate

¹⁹ SL 399.48, regulation 72(3)

²⁰ Ibid., regulation 72(4)

²¹ Ibid., regulation 72(5)

broadband internet access service to ensure consumers' full social and economic participation in society.

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 needs²².

4.2.1.1.1 Summary of Respondents' Views and MCA Comments

One of the respondents enquired on how the special tariffs would be guaranteed and what safeguards would be established to ensure that such special tariffs are not being abused of. Furthermore, this respondent also sought a clarification on whether the MCA has the power to provide safeguards or whether service providers would be enabled to require evidence and have measures in place to curtail abuse. The same respondent further mentioned that it is difficult for any undertaking to determine if a subscriber is to be designated as an end-user on low-income or with special social needs, and such subjective notions can lead to abuse.

The MCA would like to point out that the specific eligibility criteria of subscribers benefiting from the universal service of reduced fixed line rental have to date been established by the responsible Ministry or Government entity. In the 2022 USO Consultation, the Authority considered that the same practice should continue to be adopted to identify eligible consumers for the provision of support to vulnerable users such as those on low income or with special social needs, and this approach is being retained in Decision 4 hereunder.

The above-mentioned respondent also remarked that special tariffs would be better addressed by state subsidies or refund schemes. Another respondent stated that while in principle it is not against the provision of reduced tariff options for vulnerable users, however as reiterated in its previous responses on USO reviews, the preferred method to provide affordable tariffs is where support is given directly by the State to vulnerable persons. This respondent referred to Recital (219) of the EECC which states that "*...Member States could provide those consumers with direct support for communication purposes, which could be part of social allowances or vouchers for, or direct payments to, those consumers*", and then continued by stating that the direct payment approach is the preferred alternative mentioned in the EECC. The same respondent mentioned that this approach should also be applied to the reduced fixed line tariff scheme.

The MCA notes that in accordance with Decision 4, support to render the universal service affordable to eligible consumers may be provided through various forms such as reduced tariff options, special tariff packages, vouchers and direct payments/allowances. It is up to the Ministry or Government entity responsible to manage and administer the reduced fixed line tariff scheme to establish the form in which this universal service is to be provided. Furthermore, the MCA would like to highlight that as was the case in previous years, the

²² European Electronic Communications Code, Recitals (219) and (220)

source of funding of the universal service obligations is treated in a separate consultation issued by the MCA. This is detailed further in Section 7.4 of this Decision Notice.

After taking into consideration the feedback received, the MCA is retaining the text as in Proposed Decision 4 of the 2022 USO Consultation.

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 services 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, this without prejudice to the provisions in Decision 5.

4.2.1.2 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 normally benefit from a choice of providers when selecting their adequate broadband internet service and/or voice communications services, and that this should also apply to vulnerable users and low-income earners.

In this context, the MCA considers that it should not exclude any undertakings from expressing their willingness to offer reduced fixed line tariff schemes to vulnerable users. However, in the meantime, the MCA considers 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 MCA would consider changing this designation if:

- The Ministry or Government entity implements operational changes to the methodology of the scheme to allow the participation of more providers; or
- 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 MCA would consider carrying out an assessment on the basis of Decision 18 and would consult as necessary before updating the designation.

One should also 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 prior to the publication of this Decision Notice 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 (1) 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 (1) year. The aim of this pilot project is to assist students who are struggling in their studies due to economic difficulties.

The MCA has taken into consideration the 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 offers²³.

4.2.1.2.1 Summary of Respondents' Views and MCA Comments

One respondent welcomed the MCA's consideration that the recent schemes introduced by Government to provide access to an adequate broadband internet service for vulnerable users are considered as sufficient and thus no further designations are required for the provision of this service. The MCA appreciates the feedback received on this matter and reiterates that, in line with Decision 5, the position adopted for the provision of an adequate broadband internet access service to vulnerable users is subject to Government's discretion to extend or modify the scope of schemes in which it is involved.

Another respondent expressed its opinion that as long as there is a service provider willingly providing this universal service as defined in Proposed Decision 4 of the 2022 USO

²³ SL 399.48, regulation 72(6)

Consultation, no obligation ought to be imposed on another service provider. The same respondent also stated that based on MCA Communications Market Review [July 2020 to June 2021], GO's market share in the fixed telephony segment stood at 50.3%²⁴ and thus this respondent agreed that GO shall remain designated as the universal service provider of the existing reduced fixed line rental tariff.

The MCA considers that, as per Decision 5 below, the existing reduced fixed line rental tariff scheme shall continue to be provided by GO unless either the Ministry or Government entity responsible to manage and administer the scheme implements operational changes to the methodology of the scheme to allow the participation of more service providers, or 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 the Government.

After taking into consideration the feedback received, the MCA is retaining the text as in Proposed Decision 5 of the 2022 USO Consultation.

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 MCA 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 MCA 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 it to impose further obligations under the universal service regime on existing providers of voice communications services and/or broadband internet access services, this 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.

²⁴ <https://www.mca.org.mt/sites/default/files/MCA%20Communications%20Market%20Review%20July%202020-June%202021.pdf>

4.2.2 Other Specific Measures for Vulnerable Users

According to the Regulations, the MCA shall ensure, together where applicable with a competent public body or bodies and in the light of the national conditions, that support is provided to consumers with disabilities, and that other specific measures are taken, where appropriate, to ensure that consumers with disabilities can enjoy equivalent access to that enjoyed by other consumers, and that an adequate broadband internet access service and voice communications services are available and provided at an affordable rate²⁵.

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.

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.

4.2.2.1 Free Calls to Directory Enquiry Services for Visually Impaired Persons

4.2.2.1.1 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.

In the 2022 USO Consultation, the MCA proposed that this supportive measure should continue to be provided as a universal service obligation.

4.2.2.1.1.1 Summary of Respondents' Views and MCA Comments

One of the respondents commented that it is in favour of the adoption of measures intended to support vulnerable users. The same respondent pointed out that it is also voluntarily helping visually impaired persons such as by providing tailor-made mobile services at affordable rates. Another respondent commented that it already offers discounts on various services to members of the Foundation for Information Technology Accessibility (FITA) and card holders of the Commission for the Rights of Persons with Disability (CRPD), in particular mobile telephony, to enable easier access to electronic communications services for persons with special needs. The MCA welcomes the initiatives taken by these two respondents in offering

²⁵ SL 399.48, regulation 72(8)

advantageous offers for the provision of electronic communications services to consumers with disabilities.

One of the above-mentioned respondents also stated that the obligation imposed is too vague and the proposed decision does not provide information on how providers are to enable such one-off calls per week. The same respondent added that this would require manual intervention to ensure that this call is refunded to the customer as once a call is made, the system automatically charges the applicable rate to any customer making the call.

The MCA would like to point out that this obligation has been in place for several years and the designated service provider has not raised any concerns over the past years. Furthermore, the MCA has intentionally avoided being prescriptive considering that details on the form in which this support is to be provided to eligible consumers are to be established by the responsible Ministry or Government entity. Eligible consumers willing to subscribe to this service for the first time may raise a request with their service provider through a means which may be set between the responsible Ministry or Government entity and the respective service provider.

After taking into account the responses received, the MCA is retaining the text as in Proposed Decision 6 of the 2022 USO Consultation.

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.

4.2.2.1.2 Provision of the Universal Service Obligation

In the 2022 USO Consultation, the MCA proposed 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, the provider shall inform the MCA accordingly. The MCA 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.

4.2.2.1.2.1 Summary of Respondents' Views and MCA Comments

One of the respondents expressed its agreement with the MCA's proposed decision to extend the obligation for the provision of one free of charge call per week to a directory enquiry service number to eligible impaired persons to all service providers. The MCA welcomes the feedback received and reiterates that the extension of this specific measure to all providers of voice communications services is intended to enable eligible visually impaired persons to benefit from such a measure, regardless of their choice of provider.

Another respondent commented that a service provider incurs a high interconnection charge to route the call towards the directory enquiry service number. The MCA notes that, as outlined in both the 2022 USO Consultation and in sub-section 4.2.2.1.2 of this document, measures are in place to safeguard providers of voice communications services from any unfair burden which they may incur in the provision of this universal service. In particular, the universal service provider is to inform the MCA if it transpires that this facility is being used excessively by a number of people, to the extent that the provider requires funding to sustain such a burden. The MCA would then decide whether such a list should be capped to a maximum number of people. If this measure is not taken, a funding option should then be considered.

After taking into consideration the responses received, Decision 7 stands as proposed in the 2022 USO Consultation.

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.

4.2.2.2 'Telecare' type of service allowing easy access to a specialist emergency call centre

4.2.2.2.1 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' type of 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 subscribers of the 'Telecare' type of service 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 MCA accordingly. The nominal charge should be reflective of the cost of the pendant used for the 'Telecare' type of service, and should either be deducted from any deposit received, or charged directly to the end-user.

In the 2022 USO Consultation, the MCA expressed its position that it considers that there is no need to impose any additional functionality in relation to this 'Telecare' type of service as a universal service obligation. No responses were received on the definition of this universal service obligation and Decision 8 stands as proposed in the 2022 USO Consultation.

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 subscribers of the 'Telecare' type of service who are not benefiting from the reduced tariff scheme.

Any misplaced, lost, or damaged pendants used for the 'Telecare' type of service 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.

4.2.2.2 Provision of the Universal Service Obligation

Initially the 'Telecare' type of service was available only to subscribers of one provider of fixed voice communications services. However, it has eventually 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 services and/or voice communications services, and this should also apply to vulnerable users and low-income earners.

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

However, in the meantime, the MCA considers that 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 MCA would consider changing this designation if:

- The Ministry or Government entity implements operational changes to the methodology of the scheme to allow the participation of more providers; or
- 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 MCA would consider carrying out an assessment on the basis of Decision 18 and it would consult as necessary before updating the designation.

4.2.2.2.1 Summary of Respondents' Views and MCA Comments

One of the respondents stated that the provision of this universal service incurs a significant operational cost, and it reiterated that the subsidisation of this service remains viable only if it is funded from public funds.

The MCA considers that the source of funding to compensate for the net costs applicable to all universal services as specified in Section 7.4 of this Decision Notice is fair and reasonable, even in the case of this particular universal service obligation, and the aspect of source of funding is treated in a separate consultation issued by the MCA.

After taking into consideration the feedback received, the MCA maintains its position as proposed in the 2022 USO Consultation and no changes are considered necessary by the MCA to Proposed Decision 9.

Decision 9

GO shall continue to be designated as the universal service provider of the existing 'Telecare' type of 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 MCA 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 MCA would consider carrying out an assessment on the basis of Decision 18 and it would consult as necessary before updating the designation.

4.3 Control of Expenditure

Providers of broadband internet access services 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 requested²⁶. Furthermore, the MCA recognises the importance of facilities through which end-users may monitor and control their usage²⁷ and expenditure to ensure continued affordability and avoid any unwanted disconnection of voice communications services and/or of an adequate broadband internet access service²⁸. 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 MCA 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 MCA 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 broadband internet access services and/or voice communications services may be required to support on the basis of any other laws or other relevant decisions published by the MCA.

4.3.1 Free of Charge Call Barring for Outgoing Calls

4.3.1.1 Definition of the Universal Service Obligation

Over the past years, GO has been designated to provide its end-users with a free of charge facility whereby one can request barring of all outgoing calls or selective barring of outgoing calls to particular types of numbers such as mobile calls, international calls and calls to premium rate numbers, as a means for end-users to control their expenditure on a free of charge basis. The MCA also notes that during this time, other providers of voice communications services have also been 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, in the 2022 USO Consultation the MCA expressed its opinion that, as a minimum, the universal service obligations should include the provision to end-users subscribed to voice communications services of a free of charge facility to bar all outgoing

²⁶ Ibid., regulation 75(1)

²⁷ Ibid., regulation 87(7)

²⁸ Ibid., regulation 75(2)

calls, and also to bar calls to local premium rate numbers. Furthermore, in the 2022 USO Consultation the MCA stated that it would be beneficial for end-users subscribed to voice communications services to also be offered a facility to selectively bar 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 would be offered, it should be provided free of charge.

4.3.1.1.1 Summary of Respondents' Views and MCA Comments

One of the respondents expressed its view that this USO requires further clarifications. This respondent referred to sub-section 3.3.1.1 of the 2022 USO Consultation and stated that while the MCA proposed 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”* (respondent's emphasis), however in Proposed Decision 10 and Proposed Decision 11, the facility seems to apply in the same manner, i.e., on a selective basis, to outgoing calls as well as to calls to local premium rate numbers. The respondent sought MCA's clarification on whether the barring facility should apply to all outgoing calls or on a selective basis.

The same respondent added that from a technical point of view, currently it is not in a position to provide the proposed selective barring facilities to end-users subscribed to voice communications services. This respondent also mentioned that it is unable to provide its 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 as encouraged by the MCA in its Proposed Decision 11. Whilst the respondent noted that providers of voice communications services are already providing specific call barring facilities as mandated through other MCA Decision (e.g. in the case of calls to local premium rate numbers), this respondent stated that the extended call barring facilities, as mandated in Proposed Decisions 10 and 11, would require technical adjustments and implementations to be carried out by the operators. In view of these considerations, the respondent expressed disagreement with the proposed extension of the selective barring USO to all providers of fixed and/or mobile voice communications services.

Another respondent commented that currently calls to local premium services are not barred, and that such implementation would require further costs, time and development, when the said costs to such services can be avoided by end-users if they desist from using such services. Furthermore, this respondent mentioned that it already offers free of charge blocking to certain categories such as international calls and outgoing calls, both from fixed and mobile. The barring can be provided in a more generic manner, whereby one cannot just opt to bar calls to mobile numbers from the mobile network but has to bar outgoing calls in general.

Moreover, whilst the same respondent recognised the need for transparency of information and that end-users should be informed of applicable call rates, this respondent argued that the provision of selectively blocking *“calls to numbers which are charged at a rate comparatively higher than that applicable for calls to local fixed numbers”* is highly subjective

and not a straightforward option. This respondent mentioned that international call rates and the higher charges for calls to premium rate numbers are brought to the end-users' attention through the provider's website and the terms and conditions. Additionally, the same respondent commented that further information is always readily available through all the provider's customer care and retail channels. This respondent concluded its feedback by stating that implementing a facility to selectively block specific types of numbers is not a readily available functionality, reiterating that the end-user can avoid the said higher charges by not calling the said numbers or otherwise checking in advance the applicable rates.

In response to the feedback received and considering the technicalities of the call barring facility, the MCA is updating the text of Decision 10 to clarify that the facility to bar outgoing calls to a particular type of numbers may be satisfied if such a facility allows end-users to bar all outgoing calls to that particular type of numbers, without the need for this facility to allow end-users to bar outgoing calls to a subset of numbers of a particular type. Thus, if the facility for the barring of outgoing calls to international numbers is considered as an example, it would be sufficient for this facility to offer barring of outgoing calls to all international numbers, without the requirement for such a facility to also offer barring of outgoing calls to a subset of international numbers. Furthermore, the MCA has considered the feedback received in relation to the current technical limitations for the provision of call barring facilities and is including the option for service providers to offer the free of charge facilities for end-users to request either the barring of all outgoing calls or the barring of outgoing calls to specific types of numbers including calls to mobile numbers, calls to international numbers and calls to other numbers which are charged at a comparatively higher rate than that applicable for calls to local fixed numbers.

The MCA also took note of the comments received on the free of charge facility for end-users to request the barring of calls to local premium rate numbers. In this respect, the MCA considers that such a facility should continue to be included as a mandatory requirement of the universal service obligations as per Proposed Decision 10 in the 2022 USO Consultation due to its potential as a measure for end-users to control their expenditure. Furthermore, the MCA notes that in accordance with the MCA Decision "A Framework for Premium Rate Services in the '5' Numbering Range" (Document reference MCA/10/58/D, hereinafter referred to as "2010 Premium Rate Services Decision"), where an originating operator decides to offer its end-users with access to local premium rate numbers in the '5' numbering range, then the originating operator in question has an obligation to provide its end-users with a free of charge call barring facility to voice premium rate services. This obligation was also referred to by one of the respondents as detailed above. While the MCA positively notes that information on the higher rates applicable for calls to premium rate services is being made available to end-users through the terms and conditions, customer care service and retail channels, nevertheless it is imperative for the stakeholders involved to ensure adherence to the obligations emanating from the 2010 Premium Rate Services Decision including, but not limited to, obligations on the provision of the free of charge call barring facility and tariff transparency measures.

Thus, after taking into account the feedback received, the MCA is updating the text in Proposed Decision 10 to introduce more flexibility to providers of voice communications services when offering their end-users with free of charge call barring facilities.

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 facilities to:

- (a) bar outgoing calls to local premium rate numbers, in cases where the respective provider offers its end-users with access to local premium rate numbers; and
- (b) either bar all outgoing calls*, or bar outgoing calls to specific types of numbers including:
 - i. calls to mobile numbers;
 - ii. calls to international numbers; and
 - iii. calls to other numbers which are charged at a comparatively higher rate than that applicable for calls to local fixed numbers.

This decision is without prejudice to any other decision, directive, guidelines or instructions however so described published and/or communicated to providers of electronic communications services and/or networks by the MCA in accordance with the law, including those related to access to specific types of numbers and corresponding transparency measures.

*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.

4.3.1.2 Provision of the Universal Service Obligation

For the past years, only GO was designated to provide its subscribers with the free of charge facility to bar all outgoing calls or to selectively bar outgoing calls to particular types of numbers such as mobile calls, international calls and calls to premium rate numbers as part of its universal service obligations. However, in accordance with the 2010 Premium Rate Services Decision, originating operators who decide to offer their end-users with access to local premium rate numbers already have the obligation to provide all their end-users with a free of charge facility to bar calls to local voice premium rate services.

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 MCA is extending the universal service obligation as per Decision 10 to all providers of fixed and/or mobile voice communications services.

The comments received from two respondents regarding the provision of free of charge barring for outgoing calls as part of the universal service obligations are outlined in sub-section 4.3.1.1.1 above. After taking into consideration the feedback received, the MCA is maintaining the position adopted in Proposed Decision 11 to extend the provision of this universal service

obligation to all providers of fixed and/or mobile voice communications services. However, the proposed text is being streamlined to improve clarity.

Decision 11

All providers of fixed and/or mobile voice communications services are required to provide their end-users with the free of charge call barring facilities as defined in Decision 10.

4.3.2 Pre-Payment Facilities

4.3.2.1 Definition of the Universal Service Obligation

As part of the facilities available for consumers to monitor and control expenditure, the Regulations empower the MCA to require providers of broadband internet access services and/or voice communications services to provide, as part of their universal service obligations, a means for consumers to 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 expenditure on voice communications services and/or internet access services and to 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.

In the 2022 USO Consultation, the MCA proposed that such pre-payment facilities should continue to be provided 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.

4.3.2.1.1 Summary of Respondents' Views and MCA Comments

One of the respondents agreed with the MCA's consideration that affordable pre-paid mobile plans are available in the local market and that the availability of such plans adequately satisfies the specified universal service requirement to provide consumers with the option to use their voice communications services and/or internet access services on pre-paid terms. The MCA appreciates the feedback provided on this point.

No further feedback was received in relation to the definition of this universal service obligation and Decision 12 stands as proposed in the 2022 USO Consultation.

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 services and/or internet access services on pre-paid terms, rather than pay the rent or receive a bill for usage on a periodic basis.

4.3.2.2 Provision of the Universal Service Obligation

At the time of the publication of this 2023 ECS USO Decision Notice, the three largest providers of voice communications services and internet access services already offer various pre-payment options in their product portfolios. In the case of smaller service providers, the MCA acknowledges that investments in new pre-payment facilities and their maintenance may be significant. In this respect, the MCA is waiving the provision of pre-payment facilities as a universal service obligation to those providers of broadband internet access services 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.

4.3.2.2.1 Summary of Respondents' Views and MCA Comments

A respondent expressed its agreement that the pre-paid facility can be made available either in the fixed telephony or mobile telephony market. This respondent mentioned that, as the MCA noted in the 2022 USO Consultation, local market developments resulted in the availability of various pre-paid mobile plans at rates that are affordable, and which allow consumers to have more control on their expenditure on voice communications services and/or internet access services. The same respondent added that in view of this, having pre-paid options solely in the mobile telephony market should be deemed sufficient to fulfil this obligation. This respondent concluded by stating that it considers that this requirement is nowadays highly satisfied by the wide variety of pre-paid offers on the market and should not be extended to fixed telephony.

The MCA would like to clarify that as per Decision 13 below, each provider of voice communications services and/or broadband internet access services having over 5% of such subscriptions in the local fixed and/or mobile market(s) for the respective service is required to provide pre-payment facilities in at least one of these markets where its market share in terms of subscriptions exceeds 5%. In this respect, only providers having market shares in terms of subscriptions of over 5% in both the local fixed and the local mobile markets would have the option to provide pre-payment facilities in the fixed and/or mobile market(s). However, where a provider has a market share of over 5% in terms of subscriptions for voice communications services solely in the local fixed market, then this provider would be required to provide pre-payment facilities in the fixed market for voice communications services. Similarly, a provider having a market share above 5% in terms of subscriptions for broadband

internet access services solely in the local fixed market is required to provide pre-payment facilities in the fixed market for broadband internet access services.

After taking into consideration the feedback received, the MCA is retaining the text in Decision 13 as proposed in the 2022 USO Consultation.

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%.

4.4 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 are retained when the MCA deems it necessary subject to national circumstances.

4.4.1 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 2016, the MCA published a separate decision entitled 'Consolidated Decision on the Wholesale Access to Data and the Provision of Publicly Available Directory Information Services' (Document reference MCA/D/15-2245 (Consolidated)) which determines the conditions under which an undertaking is required to share subscriber directory information with providers of directory services. These include electronic directories, directory enquiry services, and printed directories. The MCA considers that the provision of the comprehensive electronic directory 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.

4.4.1.1 Definition of the Universal Service Obligation

For the past years, GO has provided a comprehensive electronic directory as a universal service obligation. This directory has been made available to the general public through GO's public Internet website since 2006, and provides fixed and mobile numbers of all those subscribers of voice communications services consenting to include their personal details for a directory information service.

Due to the significant proliferation of smartphones and internet access, over the years 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 was eventually evolved to provide an interface that is mobile friendly for all smartphone users.

This universal service obligation was again part of the 2021 USO decision. In the 2022 USO Consultation, the MCA proposed to retain this universal service obligation considering the national circumstances of directory enquiry services and directories provided on the Maltese Islands. This would ensure that end-users continue to be 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.

4.4.1.1.1 Summary of Respondents' Views and MCA Comments

A respondent expressed its support to the need of enhanced and up-to-date services to the benefit of end-users. This service provider also mentioned that given that it satisfies the legal obligation by providing data to the universal service provider, in the event other providers are desirous of offering directory services, then such providers should be required to have a general authorisation from the MCA. The same respondent further added that the issue of cost of data is not addressed. Hence, this respondent stated that it retains the right to provide access to third party operators to its subscriber database on the basis of commercial negotiations and against payment. The provision of the data would be regulated by a commercial agreement to guarantee that access and data protection principles are adhered to. The same respondent mentioned that it has an obligation to follow the General Data Protection Regulation and it would only allow access to customer information of subscribers who have opted in to be included in directory services and at a cost reflective value of this acquired and maintained information. Customers who do not express their consent to be included in a public directory would be automatically excluded from any directory database, thus safeguarding their data privacy.

The MCA notes that the respondent's comments refer to aspects which were already raised in previous decisions on universal service obligations in the electronic communications sector.

The MCA considers that regulation 99(1) of the Regulations establishes that the provision of relevant information by voice communications services providers which attribute numbers from a numbering plan to providers of directory enquiry services and directories must be in accordance with an agreed format and on terms which are fair, objective, cost oriented and non-discriminatory. Furthermore, the decision notice entitled 'Consolidated Decision on the Wholesale Access to Data and the Provision of Publicly Available Directory Information Services' (Document reference MCA/D/15-2245 (Consolidated)) which was published in 2016 addresses the respondent's comments above in further detail. Moreover, the MCA notes that Proposed Decision 14 in the 2022 USO Consultation explicitly specified that the provider requesting directory-related data is to be authorised with the MCA as an 'Other electronic communications services' provider for the sub-category 'publicly available telephone directories and directory enquiry services'.

After taking into consideration the feedback received, the MCA maintains its position as proposed in the 2022 USO Consultation and no substantive changes are considered necessary by the MCA to the text in Proposed Decision 14.

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:

- (a) be web-based; and
- (b) 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 for the sole purpose of providing directory information services. This shall also be subject to the requirement that the requesting provider, including the designated undertaking, is authorised with the MCA as an 'Other electronic communications services' provider for the sub-category 'publicly available telephone directories and directory enquiry services'.

4.4.1.2 Designation

Over the past years, the comprehensive electronic directory service has only been provided by GO as the designated undertaking. In the 2022 USO Consultation, the MCA proposed that GO, as the incumbent provider of the comprehensive electronic directory, should continue to be the designated undertaking for delivering this universal service obligation. This proposal was based on two considerations, namely, that: (i) the provision of this particular universal service involves a continuation of an existing service, and (ii) GO already has the technical abilities and competence to offer this service. 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, the MCA explained in the 2022 USO Consultation that the MCA would be amenable to issue a call for expression of interest as described in Chapter 6 – Call for Expression of Interest of this document if justified by industry. 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 MCA would proceed to designate GO to provide this universal service.

The MCA did not receive any feedback in relation to its proposal on the designation of the universal service provider of a comprehensive electronic directory service and Decision 15 stands as proposed in the 2022 USO Consultation.

Decision 15

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

4.5 Performance Monitoring and Reporting

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

No comments were received in relation to the MCA's proposal on performance monitoring and reporting on the voice communications services aspect. Thus, the MCA maintains its position as proposed in the 2022 USO Consultation and no changes are considered necessary by the Authority to Proposed Decision 16.

NOTE: The performance monitoring and reporting requirements for the provision of an adequate broadband internet access service established in the 2021 Broadband Decision are being reproduced as part of this 2023 ECS USO Decision Notice **strictly** for information purposes and for the sake of completeness only.

Decision 16 ²⁹

A designated provider providing the universal service obligation 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 services, and the underlying connection, at a fixed location to an end-user;
- functional characteristics of the broadband internet access service and/or voice communications services 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 MCA.

²⁹ The provisions of the 2021 Broadband Decision are reproduced as part of this 2023 ECS USO Decision Notice strictly for information purposes and for the sake of completeness only. The Authority is not re-establishing the provisions of the 2021 Broadband Decision through this Decision Notice. Any future updates that may be introduced to the provisions of the 2021 Broadband Decision will, when introduced, also be reproduced in the relevant sections of this 2023 ECS USO Decision Notice.

5 Time Period for Universal Service Provision

Providers are required to provide the obligations of the universal services as identified in Chapter 4 – Universal Service Obligations 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.

Respondents did not submit any feedback in relation to the MCA's proposal on the time period for universal service provision, and Decision 17 stands as proposed in the 2022 USO Consultation.

Decision 17

Providers are required to comply with the obligations of the universal services until the MCA 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.

6 Calls for Expression of Interest

When the MCA 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 manner³⁰, 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 required³¹.

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 account³².

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 service 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 defined in Chapter 4 – Universal Service Obligations of this document.

³⁰ SL 399.48, regulation 73(2)

³¹ European Electronic Communications Code, Recital (231)

³² Ibid., Recital (231)

(c) Characteristics and conditions

The MCA shall assess the manner as to how an undertaking would fulfil 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.

(d) Network integrity and service continuity

When designating an undertaking, the MCA 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 effectiveness³³ 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 expects 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 MCA 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 interest³⁴. 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.

The MCA did not receive any feedback in relation to its proposal on the main criteria outlined in (a) to (e) above for assessing which undertaking shall be designated to provide all or part

³³ SL 399.48, regulation 73(4)

³⁴ Ibid., regulation 73(2)

of the universal service obligations. Thus, the MCA retains the text in Decision 18 as proposed in the 2022 USO Consultation.

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.

7 Costing and Financing of Universal Service Obligations

In accordance with the Regulations, where the provision of universal service obligations mentioned in Sections 4.1, 4.2 and 4.4 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 MCA 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.³⁵

7.1 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. In the 2022 USO Consultation, the MCA proposed to retain the same time period such that by not later than eleven (11) months following the end of the financial year, a universal service provider may submit a written request to the MCA 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.

None of the respondents submitted any feedback on this proposal, and thus Decision 19 stands as proposed in the 2022 USO Consultation.

Decision 19

Any request for compensation shall be received in writing by the MCA by not later than eleven (11) 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.

7.2 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

³⁵ Ibid., regulations 76(1), 76(2) and 76(3)

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.

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.

No comments were received from respondents on the MCA's proposal on the provision of information in the request for compensation. Thus, the MCA retains its position as proposed in the 2022 USO Consultation and no substantive changes are considered necessary by the Authority to the text in Proposed Decision 20.

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 Electronic Communications Networks and Services (General) Regulations (SL 399.48).

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

7.3 Compensation Request Evaluation

Once a claim for compensation for the provision of universal service obligations is received within the established timeframe as stipulated in Section 7.1 above and including all the supporting evidence as detailed in Section 7.2 above, 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. The results of the cost calculation and the conclusions of the verification or audit shall be made publicly available.³⁶

The evaluation process shall consist of two phases namely:

- (a) A Reasonability Phase; and
- (b) A Calculation Accuracy Phase.

³⁶ Ibid., regulations 76(2) and 76(3)

7.3.1 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.

7.3.2 Calculation Accuracy Phase

This phase only applies if, and to the extent that, the outcome of the Reasonability 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 account³⁷.

7.4 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 Sections 4.1, 4.2 and 4.4 shall be one, or a combination, of the following options³⁸:

- 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

³⁷ Ibid., Part A of the Seventh Schedule of the Regulations

³⁸ Ibid., regulation 77(1)

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.

8 Applicability of MCA's Decision Notice

The MCA recognises that some of the decisions included in this 2023 ECS USO Decision Notice will require universal service providers to implement internal administrative, technical and/or operational updates. On the basis of the feedback received, the MCA considers it appropriate to extend the implementation timeframe beyond the two (2) months mentioned in the 2022 USO Consultation. In this regard, the new requirements that would arise from this Decision Notice shall become applicable as from 1st August 2023, at which point all providers will be required to adhere to the new norms as reflected in this Decision Notice.

In the meantime, until this 2023 ECS USO Decision Notice comes into force, the MCA's 2021 USO Decision shall remain effective and applicable along with any other requirements arising from any other applicable legislation and decisions however so described.



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