

**Telecommunications**

Cap. 282B.

TELECOMMUNICATIONS (UNIVERSAL SERVICE)  
REGULATIONS, 2003

2003/97.

**Authority:** These Regulations were made on 18th July, 2003 by the Minister under section 110(1)(f) of the *Telecommunications Act*.

**Commencement:** 28th July, 2003.

**1.** These Regulations may be cited as the *Telecommunications (Universal Service) Regulations, 2003*. Citation.

**2.** In these Regulations,

Interpretation.

"administrative levy" means the levy established by regulation 10;

"auditor" has the meaning assigned to it by section 2 of the *Insurance Act*; Cap. 310.

"eligible revenue" means revenue received by each licensee in Barbados for the provision of licensed services, less any outpayment made for providing those services;

"financial year" means the financial year of the universal service carrier;

"Fund" means the Universal Service Fund established by section 36 of the Act;

"Fund Administrator" means the Administrator appointed by the Minister to manage the Fund under regulation 9;

"Fund levy" means the contribution of licensees to the Fund under regulation 16;

"licensees" means carriers and service providers licensed under the Act;

"plan" means the universal service plan agreed between the Minister and the universal service provider in accordance with regulation 5.

Designation  
of universal  
service  
carrier.

**3.** (1) When the Minister designates a universal service carrier for Barbados pursuant to section 34(1) of the Act, the designation

(a) shall be for all geographical areas and all persons residing in Barbados; and

(b) shall be published in the *Official Gazette* and in at least one daily newspaper that is circulated in Barbados.

(2) The Minister may not designate under paragraph (1) another carrier to replace the existing universal service carrier as the universal service carrier for all geographical areas and all persons residing in Barbados unless he

(a) has first consulted with all licensees and is satisfied that it is in the public interest to replace the existing universal service carrier; and

(b) provides the existing universal service carrier with at least 12 months notice of the replacement.

Obligation  
of universal  
service  
carrier.

**4.** Any carrier designated as a universal service carrier pursuant to regulation 3 shall fulfil the universal service obligation

(a) to the extent technically feasible and economically reasonable;

(b) in a manner consistent with that obligation and the universal service plan agreed between the Minister and the universal service carrier in accordance with regulation 5.

5. (1) At least 90 days before the commencement of the financial year, the universal service carrier shall submit to the Minister a draft universal service plan with respect to the fulfilment of the universal service obligation; and the Minister shall consult with licensees on the proposed plan.

Universal  
service plan.

(2) The plan referred to in paragraph (1) shall include an estimate of the net avoidable costs that the universal service carrier reasonably believes will arise during the following financial year, to be called the "estimated net universal service costs".

(3) The plan referred to in paragraph (1) with respect to each financial year shall be agreed between the Minister and the universal service carrier at least 30 days prior to the commencement of that financial year.

6. When the plan has been agreed on between the Minister and the universal service carrier, it shall govern the fulfilment of the obligation for the relevant financial year, subject to any modifications as may be agreed between the Minister and the carrier.

Settlement  
of universal  
service plan.

7. (1) A universal service carrier shall not be considered to have failed to fulfil the obligation where it has been unable to provide service as a result of *force majeure* where that carrier

Exceptions  
to universal  
service  
obligation.

(a) advises the Minister of the *force majeure* when it arises;

(b) has taken all reasonable steps to mitigate the impact of the *force majeure*; and

(c) has consulted with the Minister to work to promptly resume fulfilment of that obligation when the *force majeure* has ended.

(2) "*Force majeure*" includes all matters outside the reasonable control of the universal service carrier, including natural disasters, acts of God, acts of war and labour disputes.

Admin-  
istering the  
Fund.

**8.** (1) The Universal Service Fund shall be

- (a) administered in accordance with the principles of the universal service obligation and these Regulations; and
- (b) conducted by means of payments between operators under the supervision of the Fund Administrator where the Minister considers it would not unreasonably prejudice the objective of universal service to do so, having regard to the impact on telecommunications carriers and service providers and universal service carriers.

Reporting  
by Fund  
Administra-  
tor and  
audits.

**9.** (1) The Minister may appoint a Fund Administrator, and notice of that appointment shall be published in the *Official Gazette*.

(2) The Fund Administrator shall oversee and administer the running and operation of the Fund in accordance with section 36(2) of the Act and these Regulations.

(3) Where a Fund Administrator has not been appointed under paragraph (1), the duties of the Fund Administrator under these Regulations shall be fulfilled by the Minister.

(4) The Fund Administrator may recover costs reasonably incurred in the exercise of his duties under these Regulations from licensees through the administrative levy referred to in regulation 10.

(5) The Fund Administrator shall submit to the Minister for his approval a budget detailing the total expected expenditure for the administration of the Fund for the following financial year 90 days before the start of the financial year; and the Minister shall make the budget available to the universal service carrier and licensees upon their request.

(6) The Fund Administrator shall keep proper accounts and adequate financial and other records, which shall be made available to the Minister or the auditor at their request.

(7) Costs reasonably incurred by the Fund Administrator in the exercise of his duties under these Regulations, and the accounts of the Fund itself under the control of the Fund Administrator, shall be subject to an annual audit conducted by an auditor who shall be appointed by the Minister.

(8) The Auditor-General may at any time, and shall on direction of the Minister responsible for Finance, carry out an investigation or audit of the accounts of the Fund Administrator.

(9) Within 90 days of the end of each financial year, the Fund Administrator shall report to the Minister on the costs reasonably incurred in the exercise of his duties under these Regulations.

(10) Within 200 days of the end of each financial year, the Fund Administrator shall report to the Minister on the audited accounts of the Fund.

(11) The reports of the Fund Administrator provided to the Minister under paragraphs (9) and (10) shall be made available to the public on request.

**10.** There shall, with the approval of the Minister of Finance, be a levy, to be known as an "administrative levy", charged on licensees to defray the costs reasonably incurred by the Fund Administrator in the exercise of his duties under these Regulations. Administrative levy.

**11.** (1) A universal service carrier shall be entitled to recover the net avoidable costs of meeting the universal service obligation for each financial year from all carriers and service providers in accordance with section 33(2)(b) of the Act. Recovery of net avoidable costs.

(2) For the purposes of section 33(5) of the Act, "the net avoidable costs" covers

- (a) administrative costs and the universal service carrier's cost of capital on relevant assets; and
- (b) an interest component calculated from the date each cost is incurred to the date when payment is due and at a rate in accordance with the prevailing bank interest rate payable in respect of loans.

(3) For the purposes of section 33(5) of the Act, "any revenues derived from the provision of universal service" means any revenues derived by the universal service carrier from the fulfilment of the universal service obligation which the universal service carrier would not have derived if it did not have the universal service obligation.

Universal  
service costs  
claim.

**12.** (1) Within 90 days after the end of each financial year, the universal service carrier shall lodge with the Fund Administrator a statement of the net universal service costs incurred by the universal service carrier in fulfilling the universal service carrier's universal service obligation in the last financial year, in these Regulations called "the claim".

(2) The claim shall be in writing and in a form approved by the Fund Administrator, and shall set out

- (a) the universal service carrier's net avoidable costs of meeting the universal service obligation for the financial year;
- (b) such data as may be necessary to verify the calculation by the universal service carrier of its net avoidable costs for the financial year; and
- (c) such other information as is necessary for the purposes of the claim.

(3) The claim shall include a statement as to whether the net universal service costs incurred were greater than or less than the estimated net universal service costs in the plan, and any reasons for material deviation from those estimated costs.

(4) The claim must be accompanied by a report of the universal service carrier's auditor that

- (a) states that the auditor has been given sufficient access to the universal service carrier's records in order to audit the claim;
- (b) states that the auditor has audited the claim for verification; and
- (c) contains a declaration of the opinion of the auditor as to the veracity of the claim.

(5) In the event that the Minister or the Fund Administrator disputes the claim, the universal service carrier shall not discontinue any service in any area of Barbados as a direct result of the dispute until such dispute is resolved; but the parties to the dispute shall each use their best efforts to resolve any such dispute within 90 days.

(6) Paragraph 5 shall not affect the right of the universal service carrier to discontinue service to any person where the discontinuance is not a direct result of a dispute under paragraph (5).

**13.** (1) Within 90 days after the end of each financial year, each licensee shall lodge with the Fund Administrator a statement of eligible revenue which each licensee has received in the last financial year.

Statement of  
eligible  
revenue.

(2) The statement of eligible revenue of each licensee must be accompanied by a report of an approved auditor that

- (a) states that the auditor has been given sufficient access to the licensee's records in order to audit the statement of eligible revenues;

- (b) states that the auditor has audited the statement of eligible revenue for verification; and
- (c) contains a declaration of the opinion of the auditor as to the veracity of the statement of eligible revenue;

and where the licensee is not a public company, the statement shall be contained in an affidavit sworn by the Chief Executive Officer or Financial Controller of the licensee.

(3) Where the statement of eligible revenue is disputed, the parties to the dispute shall use their best efforts to resolve the dispute within 90 days.

Administra-  
tor may  
inquire into  
correctness  
of claims or  
statements.

**14.** The Fund Administrator may make whatever reasonable inquiries he deems necessary or desirable in order to determine whether

- (a) a claim by a universal service carrier for compensation from the Fund for a financial year correctly states its estimated net universal service costs incurred in that financial year; or
- (b) a statement from a licensee correctly states the eligible revenue of that licensee for a financial year.

Estimated  
share of  
universal  
service  
costs.

**15.** Within 30 days of the date a claim is submitted pursuant to regulation 12, the Fund Administrator shall provide to the universal service carrier a notice specifying the total amount of net avoidable costs to which a universal service carrier is entitled, using the information provided in relation to the financial year.

Publication  
of Fund  
levy.

**16.** (1) The Fund Administrator shall as soon as practicable, and in any case within 120 days of the end of the financial year, issue a notice to each licensee specifying the contribution, to be known as the "Fund levy", to be made by each licensee to the net avoidable costs for that financial year.



(2) The Fund levy for each licensee for each financial year shall be an amount equal to the net avoidable costs of the universal service carrier for the financial year divided by the total industry eligible revenue for the financial year multiplied by the eligible revenue of the licensee for that financial year.

**17.** (1) Where either the claim or the statement of eligible revenue of any licensee or both the claim and statement of eligible revenue of any licensee are in dispute, the Fund Administrator shall provide to the universal service carrier a notice as specified in regulation 15, and issue notices to all licensees as specified in regulation 16; and the notices shall be subject to revision at such time as the dispute or disputes are resolved.

Disputes  
between  
Fund  
Administra-  
tor and a  
licensee.

(2) Where notices specified in regulations 15 and 16 are revised as provided for in [regulation 17], the Fund Administrator shall issue the revised notices to licensees; and each licensee shall make payments to the Fund as required by the revised notices and in accordance with regulation 18.

(3) Upon request by either party to a dispute in cases where both parties to the dispute have used their best efforts to resolve the dispute and this has failed, the Minister may

- (a) act as arbitrator in the dispute and issue a determination to settle the dispute; or
- (b) appoint an independent arbiter agreed upon by the parties.

(4) The determination of the independent arbiter agreed on by the parties to the dispute shall be referred to the Minister for his approval, and that approval shall not be unreasonably withheld.

(5) Where a dispute remains unresolved for more than 90 days, a licensee who is a party to the dispute shall be entitled to apply to a Judge in Chambers for determination of the matter.

Payment of  
Fund levy.

**18.** (1) Upon receipt by a licensee of a notice from the Fund Administrator specifying that licensee's Fund levy as specified in regulation 16 or revised notice as specified in regulation 17(2), that licensee shall, within 30 days of receipt of the notice,

- (a) where the Fund is not a virtual fund, pay its Fund levy in full to the Fund; or
- (b) where the Fund is a virtual fund, pay its Fund levy directly to the universal service carrier.

(2) Where the Fund is not a virtual Fund, the Fund Administrator shall pay each Fund levy directly to the universal service carrier as soon as is practicable upon receipt by the Fund of that Levy, and in any case, not more than 14 days after receipt by the Fund of that levy.

(3) Where the Fund is a virtual Fund, each licensee shall provide written confirmation of payment of the Fund levy to the Fund Administrator within 2 business days of having made payment to the universal service carrier; and the universal service carrier shall provide written verification to the Fund Administrator of receipt of payment of the Fund levy from a licensee within 5 business days of the receipt of the payment.

(4) Where a licensee, in this regulation referred to as "the defaulting licensee", fails to pay the Fund levy in a timely manner, then, to the extent that the payment remains outstanding,

- (a) the Fund Administrator may
  - (i) sue the defaulting licensee for recovery of the debt in accordance with the Laws of Barbados;
  - (ii) adjust the amount of the payment due as a result of the defaulting licensee's failure to pay; and the adjustment shall be an amount to at least compensate the universal service carrier for the value of interest on the defaulting licensee's Fund levy, calculated from the date when payment was due, to the date when payment is received by the universal service carrier; and

- (iii) invoke the operation of the guarantee under regulation 24 of these Regulations;
- (b) where the Fund Administrator has not recovered the debt under paragraph (4), the universal service carrier may
- (i) pursue the defaulting licensee for the recovery of the Fund levy in accordance with the Laws of Barbados;
  - (ii) claim interest at a rate in accordance with the principles applied to normal commercial transactions;
  - (iii) recover the levy by either off-setting it against payments for goods or services, including interconnection services, purchased by the universal service carrier from the defaulting licensee, or by adding it to payments for goods and services including interconnection services purchased by the defaulting licensee from the universal service carrier; or
  - (iv) recover all reasonable fees and costs associated with, or arising out of the pursuit of, or with the recovery of, the Fund levy;
- (c) the Minister shall take appropriate enforcement action under the Act against a defaulting licensee, including
- (i) revocation or suspension of the licence of the defaulting licensee; and
  - (ii) fines imposed on the defaulting licensee for late levy payments.

**19.** (1) Where the universal service carrier has calculated using its date, that there is a deficit in the contributions it has received and the net avoidable costs incurred in any previous financial year, the universal service carrier may submit to the Fund Administrator a written claim for compensation, to be known as an "adjustment claim".

- (2) An adjustment claim referred to in paragraph (1) must set out
- (a) audited net avoidable costs of the universal service carrier incurred for the financial year;
  - (b) details of how those net avoidable costs have been calculated;
  - (c) a statement as to whether the net avoidable costs were greater than or less than the estimated universal service costs in the plan for the relevant financial year, and any reasons for material deviation from those estimated universal service costs; and
  - (d) such other information, if any, as the adjustment claim requires.

Claim copies to be given to licensees.

**20.** As soon as practicable, and in any case, within 14 days of its receipt, the Fund Administrator shall give a copy of the adjustment claim to each licensee for the purpose of consultation and with adequate time to seek additional data and views from licensees.

Obligation to compensate universal service carrier.

**21.** Where there is a deficit between the contributions received by the universal service carrier and its net avoidable costs incurred in the relevant financial year, and the universal service carrier has issued an adjustment claim for compensation pursuant to regulation 19, the Fund Administrator shall, after conclusion of a reasonable period of consultation and the publication of a determination, include an adjustment in the contributions to be made in the then current financial year and the following year to ensure that the universal service carrier is reimbursed an amount equal to that deficit.

Publication of administrative levy.

**22.** (1) The Fund Administrator shall as soon as practicable, and in any case within 120 days of the end of the financial year, issue a notice to each licensee specifying the administrative levy.

(2) The administrative levy for each licensee for each financial year shall be an amount equal to the costs reasonably incurred by the Fund Administrator in the exercise of his duties under these Regulations and audited as required by regulation 9(7), divided by total industry eligible revenue for that financial year multiplied by the licensee's eligible revenue for that financial year.

**23.** (1) Upon receipt by a licensee of a notice from the Fund Administrator specifying that licensee's administrative levy referred to in regulation 22, that licensee shall pay its administrative levy in full to the Fund Administrator within 30 days. Payment of administrative levy.

(2) In default of payment of the administrative levy by a licensee, the Fund Administrator may sue for and recover the payment in any court.

**24.** (1) Each licensee, other than a universal service carrier, shall have in force a guarantee in a form acceptable to the Fund Administrator and given by a third person regarding discharge of the licensee's liability for the Fund levy imposed under these Regulations, and that acceptance shall not be unreasonably withheld. Fund levy guarantee.

(2) For the purposes of this regulation, a "third person" means

- (a) a bank licensed under the *Financial Institutions Act*; or Cap. 324A.
- (b) a guarantor accredited by the Fund Administrator for the purposes of this regulation; or
- (c) a guarantor whom the Fund Administrator approves in advance in writing for the purposes of this regulation.