

MINISTERIAL ORDER

(Issued by the Minister of Commerce, Science & Technology pursuant to Sections 38 & 39 of the Telecommunications Act 2000)

WHEREAS pursuant to section 11(1) of the Telecommunications Act 2000 (“the Act”) all Telecommunication Licences granted by the Minister are subject to an undertaking by the Licence “... **comply with the provisions of this Act relating to the type of facility or specified service to which the (licence) relates including ... universal service obligations...**”

AND WHEREAS pursuant to section 38(d) of the Act the provision of universal service must accord with certain express principles including the requirement that “...**licensees shall pay the universal service levy in the prescribed manner**”.

AND WHEREAS by Recommendation Document No: TEL 2004/07 the Office of Utilities Regulation (“OUR) made its recommendations to the Minister in accordance with the duties imposed on the OUR by the provisions of sections 4(1)(g) and 39 of the Act; in response to which recommendation the Minister applied the principle set out in section 39(2)(d) of the Act to determine the basis for the provision of universal service so determined.

AND WHEREAS having further considered the matter and the overall state of the industry, particularly noting the internationally recognized right of sovereign Governments to define and require surcharges for meeting the Country’s universal service requirements, separate from cost-oriented rates; and considering further the cost already borne by the industry for the on-going provision of universal service by the domestic network operators;

IT IS HEREBY ORDERED AS FOLLOWS:

1. With effect from **June 1, 2005** all carriers will contribute, on collection, a Universal Service Charge of US\$0.03 per minute on all incoming international minutes for termination to the PSTN.
2. With effect from **June 1, 2005** all Carriers will contribute, on collection, a Universal Service Charge of US\$0.02 per minute on all incoming international minutes for the termination to the PLMN.
3. Payment of the Universal contribution levied in paragraphs (1) and (2) above shall fulfill the statutory and licence requirements for contribution to the Universal Service Fund.
4. The Universal Service contributions (“the levy”) will be used to fund the implementation of the Cabinet approved plan which will include the e-Learning Project in the first instance, in accordance with the principle set out in section 39(2)(d) of the Act relating to the provision of Internet access for Schools, Libraries and Post Offices, and in accordance with the Universal Service obligations determined by the Minister pursuant to the powers conferred by section 39(1) of the Act.

5. The levy will be added to the OUR approved and /or contracted termination rates for international inbound calls payable by third parties to the Domestic Network operations (“Terminating Carriers”) and will be collected by those Terminating Carriers in accordance with the billing and payment terms of the prevailing interconnection or other agreements between the respective parties. Where rates are required to be cost-based, the levy shall be in addition to those rates.
6. Carriers will continue to provide their traffic reports, and any other information requested, to the OUR in order to validate the calculation of the levy in respect of their own traffic, and of traffic terminated on other networks by third parties.
7. The levy will due and payable in accordance with the Carrier’s monthly billing and payments Liability for payment of the levy is personal to each licensee and failure to pay over sums collected pursuant hereto will constitute a breach of the licence and of the Telecommunications Act 2000. Terminating Carriers interconnecting with other International Carriers will not be liable for the contributions charged to their interconnect customers, and accordingly the levy shall not be included in the calculation of security deposits, guarantees, other mechanisms for insuring those carriers against loss arising from non-payment of invoiced charges by their customers.
8. In the event that any party fails to pay a Terminating Carrier the necessary levy, the Terminating Carrier shall be entitled to suspend the provision of termination services in accordance with the approved procedure.
9. The administrative and operational framework shall be implemented on or before June 1, 2005 in accordance with the procedures which shall be agreed and documented and shall operate as an annex to this order. Subject to this framework being place in accordance with the Telecommunications Act, carriers shall commence collection of the levy and make timely payments to the Universal Service Fund Collection Agency & Administrator, designated by the Minister in accordance with the approval of Cabinet.
10. Licensees are required to pay the levy in accordance with the terms of their Licence, and pursuant to section (38)(d) of the Telecommunications Act 2000. The manner of payment will be as prescribed above and failure to make the requisite Universal Service Contributions shall be deemed to be a breach of the Licences issued under the Telecommunications Act 2000.

DATED THIS 19TH DAY OF APRIL, 2005



HON PHILLIP PAULWELL
MINISTER OF COMMERCE, SCIENCE & TECHNOLOGY
with Energy

ANNEX TO MINISTERIAL ORDER

(Issued by the Minister of Commerce, Science & Technology pursuant to Sections 38 & 39 of the Telecommunications Act 2000)

WHEREAS by Recommendation Document No: TEL. 2004/07 the Office of Utilities Regulation (“OUR”) made its recommendations on universal service to the Minister in accordance with the duties imposed on the OUR by the provisions of sections 4(1)(g) and 39 of the Act; in response to which recommendation the Minister applied the principle set out in section 39(2)(d) of the Act to determine the basis for the provision of universal service; and imposed a levy for the purpose of funding the provision of the universal service obligation so determined.

WHEREAS the imposition of the said levy resulted in an Application for Reconsideration by three Domestic Network Operators, with expressions of support from various members of the Association of Competitive Carriers; which Application was heard by the Honourable Minister.

WHEREAS in the process of reconsidering his earlier decision, the Minister held further consultations with the OUR, the three Applicants, various other stakeholders and interested parties, and representatives of the Association for Competitive Carriers; additionally, written and oral submissions were made by and on behalf of the Applicants.

AND WHEREAS; pursuant to the powers conferred by the Act, and recognizing the merits of the matters raised in the further submissions and consultations; and further recognizing the urgency of the need to bridge the digital divide through the implementation of the Cabinet approved Universal Service plan; the Minister and the three Applicants agreed to resolve the issues raised in the Application for Reconsideration on the terms set out in this Annex, and to continue the process of consultation and co-operation so as to ensure the efficient, transparent, and non-discriminatory administration of the universal service fund, and implementation of the universal service plan.

TERMS:

1. The within Order, (“the Order”) effective June 1, 2005, by virtue of which the Universal Service Levy is imposed, together with this Annex, will be incorporated into and form the basis of the operating mandate for the administrator of the universal service fund.
2. The fund shall be administered by a wholly owned Government subsidiary under the management of the Spectrum Management Authority, and the administrative and operational framework shall be implemented on or before June 1, 2005. Subject to this framework being in place in accordance with the Telecommunications Act, carriers shall commence collection of the levy and make timely payments to the Universal Service Fund Collection Agency & Administrator.

3. The Board of Directors of the Fund Administrator shall include two representatives, jointly nominated by the Domestic Network Operators, and management of the affairs of the company shall be accomplished through the use of Board-appointed sub-committees. The membership of such sub-committees shall be open to representatives of the contributors of the Fund, in unlimited but reasonable numbers.
4. Failure by any Licensee to make the requisite Universal Service Contributions shall be deemed to be a breach of the Licences issued under the Telecommunications Act 2000. As provided for in the Order, this Annex sets out the Approved Procedure for the suspension of termination services in the event of non-payment, or disputes regarding payment of the levy.
5. Approved Procedure for Suspension of Termination Services in the event of disputes, and non-payment: The Approved Procedure may be used by Terminating Carriers for the purpose of suspending termination services in the event of disputes as to the amount, or calculation of the levy. The terminating carrier shall notify the relevant carrier-in-default that the appropriate levy payment has not been paid in a given month ("Notification of Default"). If the carrier-in-default disagrees it will give written notice to the terminating carrier of the undisputed amount and make payment in respect of such amount within 24 hours of Notification of Default. If the carrier-in-default fails to make such undisputed payments the terminating carrier will be entitled to suspend termination services within 48 hours of delivery of the Notification of Default. The carrier's right to withhold payment of any portion of the levy due in respect of a given month shall be limited to disputed amounts which equal or exceed five percent (5%) of the total levy due for that period pursuant to the following terms and conditions:
 - (i) the traffic volumes and consequent amount in dispute must be asserted in good faith;
 - (ii) the carrier-in-default and the terminating carrier must provide each other with a written statement of the disputed traffic volumes and times and the disputed amount of the levy within ten (10) days of receipt of the invoice for the month in respect of which the levy was due. Further supporting documentation must be provided by either party to the other on reasonable request within a further five (5) days;
 - (iii) a dispute notification shall not relieve a carrier of its obligation to make levy payments due and owing within thirty (30) days of the end of the month in respect of which it is due if it is less than 5% of the total levy. If a carrier withholds an amount which is less than 5% of the total levy due on the disputed invoice, the terminating carrier may suspend termination services within 48 hours of delivery of the Notification of Default as aforesaid;
 - (iv) the parties shall exercise reasonable and good faith efforts to resolve disputed volumes and therefore the levy payments are due within twenty five (25) days of commencement of the dispute. If the parties are unable to resolve the dispute within this time, they may, by mutual agreement, choose to extend the dispute resolution period by another seven (7) days. If the parties do not choose to extend the dispute resolution

period or at the expiration of the additional seven (7) day period, the dispute shall be referred to binding arbitration. Arbitration shall be governed by the rules of the International Chamber of Commerce.

The purpose of the arbitration shall be to determine the relevant traffic volumes and times and consequently the levy due. The carrier shall pay the levy due based on the outcome of the arbitration within seven (7) days. Failure to make such payment shall entitle the terminating carrier to cease providing termination services to the carrier immediately thereafter.

In the event that a Terminating Carrier suspends termination services to a carrier it shall within three (3) days notify the OUR, the Minister, the Fund administrator, and other Terminating Carriers. The OUR will then commence proceedings under section 14 of the Telecommunications Act 2000 to determine whether or not there are grounds for a recommendation to the Minister that the licence(s) of the carrier in question should be suspended or revoked. The existence of the Approved Procedure in no way constitutes a waiver of a Terminating Carrier's contractual rights.

6. In the event of non-payment of the Levy, (and in the absence of a dispute under clause 5 above), the following procedure shall apply:

- (a) All Carriers and in particular all Terminating Carriers shall submit to the Ministry of Commerce, Science and Technology (the Ministry) and the OUR a list of parties currently terminating traffic on the domestic PLMN and/or PSTN networks pursuant to international contracts or interconnection Agreements, as well as evidence of the prevailing billing and payment terms in accordance with interconnection or such other agreements, no later than the 31st day of May, 2005. Thereafter, Terminating Carriers shall update this list as new carriers commence termination of international incoming traffic.

- (b) Within forty-eight (48) hours of the contracted final due date for payment, a Terminating Carrier shall, by virtue of a Notice of Non-payment (the Notice) which shall include traffic reports and other relevant information which validates the amount of the levy, inform the OUR of a carrier's failure to pay the levy. This notice of non-payment shall be copied to the Minister and the defaulting carrier (notice to be served in accordance with the existing contractual provisions).

- (c) Without prejudice to clause 6(e) and 6(f), and particularly in the event of non-compliance with the provisions of those clauses, the Terminating Carrier may suspend International Terminating Services to the defaulting carrier on the expiration of 48 hours after service of the Notice.

- (d) Following receipt of the Notice of non-payment the OUR shall immediately commence investigations in accordance with section 14(6) and (7) of the Telecommunications Act 2000 and request that the defaulting carrier shall within twenty-four hours of deemed receipt, give reasons in writing for its failure to pay

the levy. The OUR shall review the reasons; if it is not satisfied with the reasons, the OUR shall recommend to the Minister, the immediate suspension or revocation of the Defaulting Carrier's licence;

(e) Where the Minister accepts the OUR's recommendation for the termination of a Defaulting Carrier's licence the Minister shall serve a Notice of Suspension/Termination of Licence, which shall be copied to the OUR and all Terminating Carriers.

(f) Terminating Carriers shall forthwith cease the provision of all Incoming International Call termination services to a Defaulting Carrier upon receipt of the Notice of Suspension/Termination of Licence.

(g) For the avoidance of doubt the failure of a defaulting carrier to give reasons, in writing within the stipulated timeframe shall be grounds for the OUR to recommend to the Minister that a licence be suspended or terminated. Following receipt of the OUR's recommendation if the Minister is satisfied that the levy remains unpaid; he may order the immediate suspension and/or termination of the defaulting carrier's licence.

(h) Upon receipt of a recommendation from the OUR pursuant to this clause the Minister shall act in accordance with the provisions in clause 6(g) above.

(i) Terminating Carriers shall include the levy as a separate line item in the invoices issued under their Interconnection Agreements.

7. Audit and Disclosure: The Company shall publish interim unaudited accounts on a quarterly basis, in addition to its compliance with the audit and disclosure procedures applicable to public companies.
8. Pre-Incorporation Agreements: The matters set out in this Annex shall constitute a valid and enforceable pre-incorporation agreement, which shall be adopted by the first meeting of the Board of Directors of the company.