

10 Annex - Information society and media

38. LAW ON ELECTRONIC COMMUNICATIONS

Pursuant to Article 95 item 3 of the Constitution of Montenegro, I hereby issue the

DECREE ON PROMULGATING THE LAW ON ELECTRONIC COMMUNICATIONS

I hereby promulgate the Law on Electronic Communications passed by the Parliament of Montenegro at the seventh sitting of the first ordinary session in 2008 on 29 July 2008.

No: 01-1568/2

Podgorica, 11 August 2008

The President of Montenegro,

Filip Vujanović

LAW ON ELECTRONIC COMMUNICATIONS

I. GENERAL PROVISIONS

Object of the Law

Article 1

This Law shall regulate activities in electronic communications, determine competences, status, financing and scope of activities of the Agency for Electronic Communications and Postal Services (hereinafter referred to as the Agency) in the area of electronic communications, procedures for operators and electronic communication service providers, conditions for resolving disputes arising among participants in the market of electronic communications, define issues of providing universal service, procedures for efficient use of limited resources, define issues of protection of users of services, stipulate rights and duties regarding the issue of secrecy of electronic communications, regulate the field of surveillance and other issues related to electronic communications.

Exceptions

Article 2

(1) This Law shall not be applied:

1) to electronic communications networks, radio stations, equipment and radio frequencies which are installed and used exclusively for the purposes of defence of Montenegro and armed forces, police and security services in the field of international exchange of certain information.

2) to services of Information Society.

Definitions

Article 3

Expressions used in this law shall have the following meaning:

1. **Address** is a series or combination of decimal digits, symbols and additional information used to identify particular terminal points of a connection to public electronic communication network;
2. **Number**, represents a number or a prefix, defined in the Recommendation E.164 of the International Telecommunications Union (ITU);
3. **Emergency numbers** are unique European phone number for emergency calls "112" and all other numbers, which are defined as such by the numbering plan;

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4. **Assigning numeration and addresses** represents assigning of rights of use of numbers and/or series of numbers and/or addresses, without transfer of ownership over the numbers and/or series of numbers and/or addresses;
5. **Electronic communications network** is a set of means enabling routing, switching and transmission between certain connecting points of a signal by wires, optical or other electromagnetic means, irrespective of the type of information being carried;
6. **Electronic communications infrastructure** is a set of elements serving for placing (construction objects, container, locker, antenna mast, cable canalization and similar) and support (electric power and water supplying, air-conditioning systems, grounding, alarm annunciation, protection and similar) of electronic communication equipment;
7. **Electronic communications equipment** is equipment belonging to electronic communications networks which is used for providing services of electronic communications (machines, units, devices, terminal equipment, radio stations and other technical devices including the accompanying software);
8. **Electronic communications service** is a service completely or partly comprised of signal transmission through electronic communications networks;
9. **Electronic mail** means any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient;
10. **Functional network/system** is an electronic communications network used by the owner, who is not an operator, for performing his activities;
11. **Interference** is presence of unwanted signals at the entry point of a receiver of a given electronic communication equipment, as a consequence of a broadcast, radiation, induction or combination of thereof by other electronic communication equipment. Existence of interference is exhibited by degradation of signal transmission quality.
12. **Interconnection (internet works connection)** is a physical or logical connection of electronic communications networks, which enables users of one electronic communications network to communicate with users of other electronic communications networks, or access to services by other operators;
13. **Applications Program Interface (API)** is software interface between applications, made available by broadcasters or service providers, in the enhanced digital television equipment for digital television and radio services;
14. **Public electronic communications network** is an electronic communications network used wholly or mainly for providing public electronic communications services;
15. **Public telephone network** is an electronic communications network used to provide publicly available telephone services and which enables voice and other communications;
16. **Public electronic communications service** is a publicly available electronic communications service provided on market basis;
17. **Publicly available telephone service** is a service available to public which includes: initiating and receiving internal and international calls; providing mediators' assistance; directory and enquiry services; public pay phone services; access to emergency call services through numbers laid down for such services in the Numbering Plan;
18. **Public pay phone** is a phone available to public, the use of which is paid by instruments of payment such as coins or special electronic cards;
19. **User** of a service is a natural or legal person using or requesting public communications services;
20. **End user** is a service user who does not provide public communications networks and does not provide public communications services;

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21. **Non-geographic numbers** are numbers from the Numbering Plan that are not geographical numbers (not connected to the geographical location). These can include the numbers of mobile services, free services, added value services, and similar;
22. **Numbering** are numbers, or parts of the whole number, which enable establishing electronic communications networks on a certain area or providing certain electronic communication services;
23. **Providing electronic communications network** is establishment, management, supervision or providing of availability of such a network;
24. **Limited resources** are the radio spectrum, national numbering plan and orbital positions;
25. **Operator** is a natural or legal person, who disposes of a public communications network or connected facilities, or provides public communications services;
26. **Operator access** means making equipment or services to other operator available under defined conditions, for the purpose of providing electronic communications services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number portability or systems offering equivalent functionality; access to fixed and mobile networks, and access to conditional access systems for digital television services; access to virtual network services;
27. **Location data**, according to this Law, means any data processed in an electronic communications network indicating the geographical position of the terminal equipment of a user of a public electronic communications service;
28. **Traffic data** means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing;
29. **Call** means a connection established by means of a telephone service available to the public allowing two-way communication in real time;
30. **Emergency calls** are calls towards emergency numbers, which are processed by the bodies, designated for receiving such calls in Montenegro, in the field of protection, rescue and assistance;
31. **Subscriber** is a natural or legal person that is a party to a contract with a provider of public electronic communications services for the supply of such services;
32. **Broadcast** is unilateral radio-communications service that includes delivery, transfer and reception of audio, video and other signals intended for direct reception in open space, whether broadcast via transmitter on Earth or satellite;
33. **Radio frequency** is a basic physical parameter of electromagnetic waves or radio waves, freely propagating in open space in the conventional frequency range from 9 KHz to 3000 GHz;
34. **Radio frequency spectrum** is a range of radio frequencies determined by its cutoff frequencies;
35. **Radio station** means one or more transmitters or a combination of one or more transmitters or receivers, with one or more antennas and other devices, placed in one location, necessary for transmission of radio signal, with the exception of a receiver for direct reception of broadcast signals;
36. **Radio communications service** is an electronic communications service, provided by using radio frequencies;

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37. **Conditional access system** is a system, for which access to protected broadcasting service in decoded form is conditioned by concluding subscriber agreement or by other form of prior individual authorization;
38. **Terminal equipment** is equipment that is directly or indirectly connected to a network termination point for the purpose of transmission or reception of messages;
39. **Universal Service** means a set of telecommunications services of specified quality, available at affordable price to end users regardless of their geographic location on the territory of Montenegro and on accessible roads for disabled persons and persons with special social needs;
40. **Value-added services** are public communications services, where the provider “adds value” by information to the user improving their form or contents or providing storage for the information or finding thereof;
41. **Wide-screen television service** means a service that consists wholly or mainly of programs produced and edited to be displayed on a wide-screen television. The 16:9 format is the reference format for wide-screen television services.

Competences of the Government

Article 4

(1) The Government of Montenegro (hereinafter referred to as Government), in the field of electronic communications:

- 1) adopts the electronic communications sector strategy,
- 2) adopts the plan of allocation of frequency bands (radio spectrum),
- 3) approves the annual action plan and financial plan of the Agency,
- 4) adopts the annual report on activities of the Agency, including the financial report,
- 5) periodically determines the minimum set of services included in the universal service,
- 6) determines conditions for utilizing networks for electronic communications in a state of emergency,
- 7) does other work, according to the Law.

(2) Strategy referred to in paragraph 1 item 1 of this Article particularly includes the following:

- 1) vision,
- 2) general and concrete objectives,
- 3) mechanisms for achieving objectives,
- 4) achieving objectives dynamics.

Competences of the Ministry

Article 5

The Ministry of Transport, Maritime Affairs and Telecommunications (hereinafter referred to as Ministry) is authorized to:

- 1) adopt bylaws in accordance with this Law;
- 2) draft development strategy for this sector;
- 3) perform activities that encourage development of electronic communications;
- 4) act in coordination with the Agency within its competences stipulated by the law regulating the field of competition protection;
- 5) define limiting values of quality of utilities of the “universal service”, proposed by the Agency;

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6) stipulate criteria and methodology which the Agency is obliged to comply with in the course of adopting enactments on tariffs and payment modes for operators of electronic communications networks and service providers, who perform activities and use limited resources on the basis of general authorization;

7) authorize institutions which may conduct the certification of electronic communication, radio and terminal equipment, according to regulations that will be adopted on the basis of this Law;

8) coordinate activities with competent ministries and the Agency regarding the use of radio frequencies and electronic communications networks in issues of importance for security and defence;

9) coordinate and conduct decisions of the Government which concern the operation of electronic communications networks in state of emergency;

10) participate in activities of expert bodies;

11) carry out other tasks in accordance with this Law.

CHAPTER II

AGENCY FOR ELECTRONIC COMMUNICATIONS AND POSTAL SERVICES

Work Scope of the Agency

Article 6

Conditions for efficient implementation and improvement of the established policy in the field of electronic communications shall be provided by the Agency.

Status of the Agency

Article 7

- 1) The Agency shall have the status of a legal person, with public competences, in accordance with the law.
- 2) The Agency shall operate under the name: Agency for Electronic Communications and Postal Services.
- 3) The seat of the Agency shall be in Podgorica.
- 4) The Agency shall be signed in the Central Register of the Commercial Court.
- 5) The Agency shall be functionally independent from legal and natural persons that provide electronic communications networks, equipment or services.
- 6) Work of the Agency shall be public.
- 7) Statute of the Agency shall more closely define internal organization, competences and scope of activities of bodies and expert services of the Agency, adoption of enactments and other issues of importance to the activities of the Agency, defined in this Law and other laws that regulate the field of postal activities.
- 8) Statute of the Agency shall be approved by the Government.

Responsibility of the Agency

Article 8

In the field of electronic communications the Agency shall:

- 1) prepare expert foundation for drafting regulatory acts adopted by the Ministry according to this Law;
- 2) adopt procedures and norms for application of the Law and bylaws;
- 3) prepare expert foundation for drafting regulations adopted by the Ministry according to this Law;
- 4) prepare expert foundation for preparation of the Radio Frequency Allocation Plan adopted by the Government, and shall be in charge of monitoring of its implementation;
- 5) adopt Numeration Plans and Addressing Plans and shall be in charge of monitoring of its implementation;

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- 6) adopt Radio Frequency Assignment Plan and control its implementation;
- 7) perform continuous monitoring of the radio-frequency band;
- 8) coordinate the use of radio-frequencies with the neighbouring countries' administrations;
- 9) stimulate the rational use of electronic communications infrastructure;
- 10) resolve issues and remarks and consider the initiatives and adopt procedures and norms from the field of protection of interests and rights of users of services;
- 11) carry out public tender procedures and allocate the usage of limited resources on non-discriminatory basis (radio-frequencies, numeration and addresses) to electronic communications networks operators and electronic communications services providers;
- 12) issue approvals for frequencies, numeration and addresses;
- 13) keep registers according to this Law;
- 14) define, under the Government's consent, the amount of fees that operators of electronic communications networks and services providers pay to the Agency, based on the Agency's actual costs and established criteria regulated by the Ministry;
- 15) resolve disputes arising among the participants in the electronic communications market, in cooperation with institutions competent for protection of competition and users;
- 16) carry out legally regulated procedure for establishment of the Universal Service operator, monitor development of the Universal Service, administer and manage the collection of fees paid by the other operators on that basis;
- 17) organize and regularly update the electronic data base in the electronic communications sector, providing access to all information which are not regulatory restricted regarding confidentiality;
- 18) monitor the market, determine operators with significant market power and take protective measures on preventing the negative effects of the operators' significant market power;
- 19) supervise the work of operators in the electronic communications sector regarding its conformity with the Law, bylaws and valid technical regulations and standards;
- 20) monitor the fulfilment of commitments which were appointed for the operators of electronic communications networks and/or electronic communications services' providers in emergency cases;
- 21) develop cooperation with regulatory authorities of other countries within its competence or, given the consent of the Ministry, perform other types of activities in international organizations from the field of electronic communications;
- 22) perform market and public opinion analyses, carry out open consultative procedures allowing all stakeholders comment the initiatives, measures, decisions and the acts prepared, proposed or adopted;
- 23) organize professional conferences regarding certain issues from the field of electronic communications;
- 24) prepare the work programme and financial plan for the next calendar year and submit them to the Government for consent;
- 25) prepare and submit the Annual Report to the Government, including basic indicators of the dynamics of the electronic communications market development for the previous year including financial report;
- 26) conduct other operations according to the Law.

Bodies of the Agency

Article 9

- (1) Bodies of the Agency shall be the Council of the Agency and the Executive Director of the Agency.
- (2) The Council of the Agency shall have a president, who will be engaged as professional full-time employee of the Agency, and 4 members of the Council, who shall perform their function on part-time basis and may be engaged as professionals in the Agency. President of the Council shall organize the sessions and preside in the activities of the Council. In his absence, he/she shall be replaced by a member of the Council authorized by the Council at its first session. Regular sessions shall be held at least once a month, or more times when necessary. Council shall be responsible to the Government.

- (3) Duties of the Council shall be the following: adopting the Statute of the Agency; adopting procedures, norms and decisions based on regulatory rules, in conformity with this Law (on market power, tariffs, co-location, interconnection, provider of Universal Service and fees on the basis thereof, public tender procedures, disputes among entities in the market and similar); adopting Work Programme and Financial Plan of the Agency; adopt Radio Frequency Assignment Plan, adopting Numbering Plans and Addressing Plans; submitting the Annual Report to the Government including the financial report.
- (4) The Executive Director shall be engaged as professional full-time employee of the Agency. He shall represent the Agency, and be responsible for legitimacy of work of the Agency, and manage business operations of professional services of the Agency. Executive Director shall be responsible to the Council of the Agency.

Appointment of Bodies of the Agency

Article 10

- (1) After public announcement and upon the Minister's proposal, the President and members of the Council shall be appointed by the Government.
- (2) President of the Council and members of the Council shall be appointed for a term of five years. For the first appointment of the Council, two members of the Council shall be appointed for a term of five years, whereas two members shall be appointed for a term of three years. Candidates with better qualifications (length and type of work experience, special education, foreign language skills, etc) shall be appointed for a term of five years.
- (3) The Executive Director shall be appointed by the Council, for a term of office of four years. The public competition procedure for selection of the Executive Director shall be conducted by the Committee appointed by the President of the Council of the Agency.
- (4) President of the Council, members of the Council and the Executive Director, shall not hold office for more than two consecutive terms.

Criteria for Selection of Bodies of the Agency

Article 11

- (1) President of the Council, members of the Council and the Executive Director shall hold Montenegrin citizenship and have permanent residence in Montenegro, and they shall, beside the general, also fulfil the following special criteria:
 - (1) high education in the field of telecommunications, electronics, economy and law;
 - (2) at least five years of experience, covering positions in the field of electronic communications.
- (2) President of the Council, members of the Council, Executive Director and members of their families can not have ownership rights nor have other interests in any organization which exploit electronic communications networks and provide services or equipment.
- (3) Persons from paragraph 1 of this Article may not be members of the Parliament of Montenegro or members of municipal assemblies, officials or members of bodies of political parties.
- (4) The evidence of fulfilment of the terms from paragraph 2 of this Article shall be the statement of a candidate.

Dismissal of Bodies of the Agency

Article 12

- (1) Government shall dismiss the President or a member of the Council before the expiration of their term of office if they:
 1. submit resignation,
 2. are convicted of a crime, or an act which makes them unfit for performing duties,
 3. violate provisions of the Law, incompetently or negligently perform duties,
 4. damage reputation and independence of the Agency by their conduct,
 5. permanently lose ability to perform duties,
 6. act opposite to the Article 11, paragraphs 2 and 3, of this Law.
- (2) Council of the Agency shall dismiss the Executive Director before the expiration of his term of office, in cases mentioned in paragraph 1 of this Article.

Financial Sources, Financial Plan and Program of Activities of the Agency

Article 13

- (1) Financial sources of the Agency shall be the following:
 - 1) registration fees;
 - 2) fees for performing activities of regulation and supervision of the market;
 - 3) fees based on authorization for use of radio frequencies and numbering;
 - 4) fees defined in the Laws regulating the field subject to the jurisdiction of the Agency.
- (2) Annual financial plan of the Agency shall contain a projection of total revenues and expenses, including reserves for unforeseen expenditures, separated into categories according to the fields of regulation and market supervision, usage of numbering resources and radio frequency spectrum, and postal services.
- (3) The Agency shall submit its financial plan along with the Activities Program, for the following year, to the Government not later than 1 November of the current year. Financial Plan and Work Programme of the Agency shall be submitted to the Parliament of Montenegro for adoption, until 1 of December of the current year at the latest, as a separate part of the Budget of Montenegro.
- (4) Financial plan, with Work Program shall be published in the manner provided by the Statute of the Agency.

Accounting in the Agency

Article 14

- (1) The Agency shall keep separate accounting, per fields of jurisdiction, in accordance with the special Law.
- (2) All accounts of the Agency's revenues and expenses shall be subject to annual audit by an independent authorized auditor, appointed by the Government.
- (3) Expenses of the audit shall be covered by the Agency.

Excess Revenue over Expenses

Article 15

If the annual account of the Agency's revenues and expenditures indicates that total revenues generated by the Agency are higher than total expenditures, the surplus shall be set aside on a separate account and may be used exclusively for fulfilment of legal obligations related to the Agency's function in the next calendar year.

Report on Activities of the Agency

Article 16

- (1) The Agency shall prepare a report on activities and financial report for the previous year, not later than the end of the second quarter of a current year.
- (2) Reports referred to in the paragraph 1 of this Article shall be adopted by the Council of the Agency provided consent of the Government.
- (3) Report on activities shall contain information on:
 1. dynamics of development of competition in the market of electronic communications and application of tariff policy principles,
 2. degree of universal service development, with an evaluation of user satisfaction with this service,
 3. assigned limited resources (radio frequencies and numbering), with an evaluation of efficiency of their utilization,
 4. degree of development of electronic communications in Montenegro for the subject year, with an overview of capacity, type and quality of services provided by operators and services providers to end users.

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5. planned and completed tasks of the Agency for the subject year.
- (4) Financial Report contains financial indicators of business operations of the Agency. Audit of this report shall be performed by independent auditors.
- (5) Activities Report of the Agency, finance report as well as report of the auditor shall be published on the website of the Agency.

Registry of the Agency

Article 17

- (1) The Agency shall keep a registry of operators, registry of approved radio-frequencies and a registry of the assigned numeration and addresses.
- (2) Content and manner of keeping registries shall be prescribed by the Ministry.
- (3) Information from the Registry of the Agency shall be stored for 5 years after termination of work of the operator providing public communication services, i.e. providing public communications network or functional communications network.

Collecting Information

Article 18

- (1) Any electronic communications network operator and service provider shall make all the information at their disposal, including financial, available to the Agency upon a written request in a form and deadlines requested by the Agency, except the data referred to in Articles 125, 126 and 127 of this Law.
- (2) Request of the Agency must be explained and proportionate to the purpose and expected effect.

The Manner of Decision Making

Article 19

- (1) The Council of the Agency shall make decisions on rights and obligations of the operators providing electronic communications services and/or electronic communications network.
- (2) Procedure before the Agency shall be conducted by application of provisions of the Law that regulates general administrative procedure, unless it is otherwise stipulated by this Law.
- (3) Agency shall make a decision within 3 months from the day of the request submission.

- (4) Decisions of the Agency shall be adopted by the Council, by the majority of votes of a total number of members.
- (5) Decision of the Agency shall be publicly available at the web site, with due regard to the conditions of business secret protection. Parties in the procedure shall be supplied with the full report on the reasons on which the aforementioned enactment is based.
- (6) A complaint against the decision of the Agency may be submitted to the Ministry within 15 days as of the day of decision receiving.
- (7) Complaint submitted against the Agency's decision shall not delay its execution.
- (8) A law suit against the Ministry's decision may be filed to the competent court.

Possibility of Mediation in Disputes

Article 20

- (1) In case of a dispute between the operators providing electronic communications networks or services, the operators can make an agreement in written form or the Agency can suggest to settle the dispute by applying the rules of mediation or arbitrary procedures, if those would contribute to a better and timely resolution of such a dispute, in accordance with objectives of efficient competition, market development and protections of users' interests.
- (2) If the Agency suggested mechanisms of mediation, it shall be obliged to immediately notify parties to the dispute thereof.

Cooperation with Other Competent Bodies

Article 21

- (1) The Agency shall supply the Ministry with any required data, information and technical assistance, should the Ministry require these for execution of duties stipulated by this Law, within the deadline defined by the Ministry.
- (2) The Agency shall supply the information and data in due course to the regulatory body for broadcast programme content, at the request thereof, which are necessary for performing regulatory function in this field (monitoring TV programs, data on available broadcasting frequencies, etc.) within the deadline defined by the regulatory body in charge of program content, which can not be less than 7 days.

CHAPTER III

ELECTRONIC COMMUNICATIONS NETWORKS

Provision of Electronic Communications Networks and Services

Article 22

Any legal or natural person may construct, provide and use electronic communications networks and equipment with appropriate infrastructure, under the conditions provided by this Law, regulations adopted based on it and other regulations if, in doing so, it is not contrary to the public order, human life and health, public and national security.

Public Interest

Article 23

Construction, maintenance, development and utilization of electronic communications networks, and equipment with associated infrastructure, as well as provision of electronic communication services and management and use of radio frequency spectrum, numeration and addresses shall be the activities of public interest for Montenegro.

Construction

Article 24

- (1) Construction of electronic communications networks, with appropriate infrastructure shall be conducted in accordance with the law and regulations regulating the field of construction, unless it is not opposite to this Law.
- (2) Construction and use of electronic communication networks and equipment and providing of electronic communication services must be performed in a way providing complete supervision and regulatory control by supervision bodies determined by this Law and the law regulating construction of facilities.

Technical Conditions for Connection to Public Electronic Communications Networks

Article 25

- (1) Electronic communications network and terminal equipment intended for connection to public electronic communications network, shall meet the technical conditions that enable free selection of operators and terminal equipment, safety of use, integrity of public electronic communications networks and interoperability of public electronic communications services.
- (2) Conditions referred to in paragraph 1 of this Article shall be specified by the Ministry.

Household Installations and Joint Systems

Article 26

- (1) In the course of construction of apartment and office buildings, intended for sale or joint use, the investor thereof shall supply subscriber communication cables, cables for cable distribution and joint antenna system, which are necessary exclusively for that building, in accordance with the project documentation.
- (2) Cables and systems from paragraph 1 of this Article including the remaining elements of electronic communications network shall be constructed in the way that enables easy

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approach, replacement, upgrading, and utilization not conditioned by regime of use by individual users or service providers.

- (3) Investor from paragraph 1 of this Article is obliged, to construct appropriate connections on public electronic communications networks.
- (4) Obligations of investors referred to in paragraph 1, 2 and 3 of this Article shall be prescribed by the Agency.

Adjustment of Use of Public Electronic Communications Services

Article 27

- (1) Owner or the authorized user of apartment or office building may adjust the way of utilization of public electronic communications services in their part of the building or space according to their needs, in a way which does not have an effect inside and outside of that area, in accordance with the Law.
- (2) Manner and scope of adjustment from paragraph 1 of this Article in buildings or spaces intended for public use shall be prescribed by the Ministry.

Activities in the Zone of Telecommunications Facilities

Article 28

- (3) In vicinity of facilities, equipment or routes on which elements of electronic communication networks or radio corridors are set, there shall be no construction works, construction of new buildings, planting seedlings or conducting of any other activities that may damage electronic communication network components or interfere with the operation thereof.
- (4) In the course of construction and placement of electronic communication networks and equipment on the land and at the buildings not owned by operators, the operators shall be obliged to implement due measures of protection of their equipment and facilities from damages that could occur through regular use of related land or buildings.
- (5) In the protective zone or radio corridors of radio station, no construction works, construction of new buildings, installing technical equipment or conducting any other activities that may obstruct propagation of electromagnetic waves or cause interference with radio communications, shall be permitted.
- (6) The expenses of taking measures and obtaining consent referred to in paragraph 2 of this Article shall be paid by the investor or constructor.
- (7) Ministry, provided consent of a ministry in charge of spatial planning, shall, according to regulations governing spatial planning and construction of facilities, pass the regulation, which will determine elements of electronic communication networks and matched infrastructure, width of protective zones and types of radio corridors in which area no construction of other object is allowed in the meaning of paragraph 1 of this Article.

Relocation and Protection of Existing Public Communications Networks

Article 29.

- (8) The operator that intends to build public electronic communications network may, in the course of establishing the right to use immovable property and the right of easement of property, request relocation, change or expansion of other existing buildings and assets, if it proves necessary.
- (9) Expenses of relocation, change or expansion of buildings and assets shall be fully compensated by the requesting party.
- (10) In cases when, for purposes of construction of communal buildings and other public buildings, and installations, it is required to relocate or protect existing electronic communications network or associated infrastructure, the investor of construction works shall be obliged to inform the owner of public communications network or associated infrastructure at least 30 days prior to scheduled beginning of the construction works and to provide access to them for purposes of supervision of those construction works.
- (11) Stakeholders may define rights and obligations by means of a contract during relocation and protection of their facilities.

Construction in the Road Zone

Article 30

- (1) The investor shall be obliged to submit a notification to the Agency, no later than 30 days prior to initiating construction of a road, which shall contain dates of the beginning and finishing of construction works as well as define the route of the road.
- (2) The Agency shall be obliged to publish the information from paragraph 1 of this Article on its web site.
- (3) The investor from paragraph (1) of this Article, upon a request of an operator of electronic communications networks, shall negotiate on non-discriminatory basis and in good faith on the options and conditions of building electronic communication objects and infrastructure in the road zone.
- (4) Activities in the area of telecommunications objects and relocation and protection of the existing public communications networks referred to in Articles 28 and 29 of this Law, as well as construction in a road zone referred to in this Article cannot be undertaken without the consent of the Agency which is obliged to obtain the opinion of the bodies responsible for safety and defence prior to issuance of the consent.

PUBLIC ELECTRONIC COMMUNICATIONS NETWORKS

Application

Article 31

- (1) Operator can be physical or legal person which disposes of public communications network or related possibilities, i.e. person providing public communications services and which is registered for providing telecommunications services.
- (2) Before beginning, ending or change of the regime of usage of the public electronic communications network or providing public electronic communications services, it is necessary to submit a written application to the Agency.
- (3) Operator shall start with work or will change regime of usage of public electronic communications networks and/or services after submission of application referred to in paragraph 2 of this Article.
- (4) The application referred to in paragraph 2 of this Article contains data which the Agency needs for signing in, deleting or updating of the Official Register, as follows:
 - 1) name, identification number, address, for physical persons;
 - 2) name of the business organizations, head office, tax and registry number, authorizations of the representative, for legal persons;
 - 3) short description of public communications networks, i.e. communication services, which shows characteristic physical features of a network and equipment, their influence on the environment, the manner of functioning and providing services;
 - 4) planned date of initiation, change or termination of procuring or providing public communication networks and services.
- (5) The Agency shall be obliged to register the operator by making an entry in the official registry within 7 days of the receipt of the application containing all required information and evidence from paragraph 4 of this Article, with a written confirmation of the registration made.
- (6) The Agency shall, within 7 days from the day of receipt of an application that does not contain all necessary information and evidence from paragraph 4 of this Article, inform the operator to fill the application within a period that shall not be shorter than 8 days.
- (7) Regarding the change of data from the paragraph 4, items 1 and 2, of this Article, operator shall inform the Agency within 30 days from the day they have been made. Regarding the change of data from items 3 and 4 of paragraph 4, of this Article, operator shall inform the Agency at least 15 days before the envisaged date.

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- (8) If the Agency does not act upon the application from the paragraph 2 of this Article in time provided for by paragraphs 5 and 6 of this Article, signing into the Register shall be considered completed.
- (9) Holders of functional networks systems that have connections to public communications networks, shall be obliged to submit upon request of the Agency or other competent bodies the application which specifically contains methods of connection to the public network, network configuration and a description of possibilities of the use of functional network and equipment in a state of emergency.

Payment based on the application

Article 32

- (1) When submitting the application from the Article 31 of this Law for the first time, the applicant shall be obliged to pay the Agency a short term registration fee, which corresponds to costs of signing in the Registry of operators.
- (2) The amount of the fee referred to in paragraph 1 of this Article shall be determined by the Agency with consent of the Ministry.
- (3) Based on the application from the Article 31 of this Law, public electronic communications networks and/or services operators shall pay to the Agency the regular annual fee for costs of regulation and supervision of the market in the electronic communications sector.
- (4) Fee from paragraph 3 of this Article shall not include costs that the Agency has in enforcing the Law provisions referring to the use of limited resources- frequencies, numbers, and addresses.
- (5) Fee from the paragraph 3 of this Article amounts to 1,5% of the total annual revenue of operator generated in the previous year in the extent which covers regulation expenses and market supervision in the sector of electronic communications foreseen by the Financial Plan.
- (6) Operator shall pay the amount from the paragraph 3 of this Article within 60 days from the day of adoption of the Financial Plan.
- (7) Operator shall be obliged, in each calendar year, to inform the Agency on the amount of revenue from the previous year by the end of the sixth month of the current year. If the operator does not do so until the deadline specified, the Agency shall consider the revenue to be the total revenue from the previous year based on the information from the public revenues authority of Montenegro.
- (8) If the Agency has a reasonable doubt concerning the accuracy of data submitted by the operator, it may authorize an auditor by its own choice, to perform an inspection. If the estimated revenue deviates for more than 3 % from the reported revenue, the Agency shall, in calculation, take into account the estimated revenue, and costs of the audit shall be covered by the operator.

CHAPTER IV

GENERAL OBLIGATIONS OF OPERATORS

Joint Use of Electronic Communications Infrastructure

Article 33

- (1) For purposes of rational use of space, protection of the environment or public health, public security or the urban planning, construction of objects and infrastructure of public operators shall be conducted in the manner as to enable, to the maximum possible extent, availability of quality joint use of electronic communication infrastructure. Operators shall, when constructing and utilizing communications networks, undertake all measures that enable access and quality joint use of electronic communications infrastructure.
- (2) Operators of public communications networks shall be obliged to negotiate with other operators of public communications networks on the joint use of electronic communications infrastructure, if such use is technically feasible and does not cause harmful interference. The operator is obliged to respond within 15 days from the day of submission of requests on negotiations on joint use of subject infrastructure.

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- (3) The Agency shall encourage specifying joint use from paragraph (1) of this Article, by means of an agreement.
- (4) Operator shall, upon a request from the Agency, submit updated information on its capacities that are of interest for the joint use of subject infrastructure, at least once in three months.
- (5) The Agency shall prescribe the amount and manner of submitting data referred to in paragraph 4 of this Article.
- (6) When the operator of public communications networks is denied access to electronic communications infrastructure or an agreement on joint use is not reached, the Agency shall resolve the subject of the dispute in question upon the request from one of the parties, in accordance with this Law.
- (7) In special cases when joint use is necessary due to reasons of environment protection, health protection, safety, urban planning or rational land use, and if public operators do not come to an agreement on joint use of electronic communications infrastructure the Agency shall define rules and conditions of joint use.
- (8) The Agency shall not decide on joint use from paragraph 7 of this Article if such use would affect actual rights of a third person, unless an operator initiated the procedure of expropriation or establishing the easement.
- (9) Prior to issuing a decision on joint use from paragraph 7 of this Article, the Agency shall implement the procedure of a public debate.
- (10) Agency shall resolve the dispute from the paragraph 6 of this Article within 30 days from the day of request submission, and dispute from the paragraph 7 of this Article, within 60 days from the day of request submission.

Negotiating on Interconnection and Operator Access

Article 34

- (1) Operators shall have the right and duty to negotiate between themselves on operator access and interconnection and to announce accurate data interested for negotiation performing.
- (2) Operator is obliged to answer on the request for interconnection or operator access within 15 days as of the day of request submission.
- (3) The operators shall resolve technical and commercial issues regarding interconnection and operator access by means of written contract which shall be in accordance with this Law and shall contain the following:
 - 1) subject of the contract;
 - 2) services to be provided, and the agreed quality and time limits;
 - 3) commercial terms;
 - 4) maintenance of the operability of networks;
 - 5) interoperability of services;
 - 6) termination or the expiry of contracts concluded for a fixed period, and the notice period for contracts concluded for an indefinite period;
 - 7) procedure for meeting the requirements of data protection in the course of provision of services;
 - 8) sanctions in connection with any inobservance of the contract;
 - 9) method of assuming responsibility for services provided to third parties.
- (4) Contracting parties shall be obliged to protect the confidentiality of any information they exchanged in the course of concluding the contract referred to in paragraph 3 of this Article. This information shall not be used for any other purpose.
- (5) Contracting parties shall be obliged to submit one copy of the contract on interconnection and operator access concluded with the operators in Montenegro or with the operators from other countries to the Agency for the purpose of filing and assessment of conformity with the Law.
- (6) Agency shall prescribe conditions under which operator may limit interconnection or operator access.

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- (7) If the agreement on interconnection or operator access can not be reached, the Agency shall resolve the dispute, upon a request from one of the parties, within 30 days, regulating only such issues on which agreement could not have been reached by the parties involved.

Use of Functional Networks

Article 35

- (1) If legal entities performing business activities that are not exclusively in the field of electronic communications intend to use own functional networks for provision of public electronic communications services, they shall be obliged to submit a Notification to the Agency as specified in the Article 31 of this Law.
- (2) Legal entities referred to in paragraph 1 of this Article shall be obliged to establish an independent legal entity for providing public communications networks or services or to keep a separate accounting for activities related to provision of public communications services.

Distribution of Digital Radio and Television Programs and Services

Article 36

- (1) Public communications networks intended for distribution of digital television services to the wide screen receivers shall be planned so as to support the distribution of wide-screen television services and programs.
- (2) Operator providing public communications networks serving for distribution of digital TV programs to the wide screen TV receivers shall be obliged to preserve the format of wide-screen television services or programs upon the transmission of services or programs of wide screen television.
- (3) Operator referred to in paragraph 2 of this Article shall be obliged to ensure access to application program interfaces (API) or electronic program guides (EPG) under fair and non-discriminatory conditions.
- (4) The Ministry shall prescribe conditions for interoperability of digital radio and television user equipment in accordance with international standards.

Conditional Access Systems

Article 37

- (1) Systems with conditional access to services of digital television or radio services shall have such technical facilities to enable the operators of public communication network to have full control over provided services.
- (2) Operator providing conditional access services which allows the access to digital television and radio services that broadcasters of particular programs depend on, shall be obliged to offer technical services to the broadcasters, under non-discriminatory conditions, enabling their subscribers to have access to services of those broadcasters by using decoders.
- (3) Operators of conditional access services shall be obliged to keep separate accounting for the provision of conditional access services.

Mandatory Transmission of Programme content

Article 38

- (1) In case when the network used for distribution of signal of radio and television program, represents a dominant method of reception of such programs in a particular area of the service, the Agency shall assign the obligation to the operator to broadcast particular programs or contents, upon a request from the regulatory body for programme content.
- (2) The amount and type of programs and contents referred to in paragraph 1 of this Article shall be determined by the regulatory body for programme content.

Compliance with Media Legislation

Article 39

- (1) Operators of networks performing broadcast and distribution of radio and television programs shall undertake, within their possibilities, measures for prevention of broadcast of illegal

programs and other contents and apply measures stipulated by the laws and regulations on media and programme content.

CHAPTER V
ENSURING COMPETITION
Operators with Significant Market Power

Article 40

- (1) For the purposes of ensuring competition and preventing harmful effects of lack of competition, the Agency shall analyze the market of electronic communications in cooperation with the body in charge of competition protection.
- (2) For purposes of ensuring competition in the market of electronic communications, it shall be considered that one operator has significant market power, according to this Law, if individually or together with other operators on a particular relevant market they possess economic influence which enables them to have a larger degree of independence in comparison to their competition and users.
- (3) If two or more operators operate in the market structure which has been estimated as one enabling coordinated actions, they shall be treated as operators in joint domination in relation to conditions from paragraph 1 of this Article, even in cases of lack of structural or other connections among such operators.
- (4) If based on the analysis of relevant market, the Agency establishes that efficient competition exists in the given market, it shall not identify any operator as the one with significant market power.
- (5) Operator with significant market power on the relevant market may be considered to have significant market power in another connected market, if connecting these markets enables market power to be transferred from one market to another and thereby increase market power of an operator.
- (6) Upon assessing whether an operator has significant market power in accordance with paragraph 1 of this Article, the Agency shall specifically take into consideration the following criteria:
 - 1) market share of telecommunications operator in the relevant market and change in the structure over a longer period of time;
 - 2) barriers to entry in the relevant market and the effect of potential competition in that market;
 - 3) influence of large users to the power of an operator (countervailing purchasing power);
 - 4) elasticity of demand;
 - 5) current conditions regarding competition in a relevant market;
 - 6) technological advantages and superiority;
 - 7) level of development of sales and distribution network;
 - 8) the degree of vertical integration;
 - 9) the degree of service differentiation;
 - 10) privileged access to financial markets or financial resources;
 - 11) whether it controls infrastructure, which can not be easily doubled in volume;
 - 12) connection of services.
- (7) Upon assessing whether two or more operators jointly possess significant market power in accordance with paragraph 2 of this Article, the Agency shall take into account the following criteria:
 - 1) the level of concentration of the relevant market, distribution of market shares in the relevant market and their variation over longer period of time;
 - 2) barriers to entry into a relevant market and effect of potential competition on that market;
 - 3) influence of large users on the operators' power (countervailing purchase power);
 - 4) transparency of the relevant market;
 - 5) homogeneity of services;

- 6) elasticity of demand;
 - 7) the level of technical innovations and development of technology;
 - 8) the existence of available (unused) assets;
 - 9) the existence of informal or other links between the operators;
 - 10) retaliatory mechanisms employed by the operators regarding compensation measures;
 - 11) existence of price competition.
- (8) In assessing significant market power and applying the criteria of this Article, the Agency shall cooperate with the body competent for competition protection taking international practice into account.

Identification of Relevant Markets

Article 41

- (1) In cooperation with a body in charge of competition protection, the Agency shall define, monitor and review relevant services and relevant geographic markets in Montenegro in the field of electronic communications.
- (2) In the course of identifying the market referred to in paragraph 1 of this Article, the practice of the European Union shall be taken into account. Before issuing relevant act by which relevant services and geographical markets will be designated, the Agency shall organize public debate.
- (3) In case of existence of international contracts and obligations of Montenegro in this field, the Agency may determine trans-national relevant markets.

Analysis of Relevant Markets

Article 42

- (1) The Agency shall be obliged to analyze markets in cooperation with the body responsible for protection of competition, or independently according to this Law, for the purpose of identification of anti-competitive behaviour.
- (2) Analysis of trans-national markets shall be conducted by the Agency in cooperation with competent regulatory bodies of those countries.

Identification of Operators with Significant Market Power and Assigning Obligations

Article 43

- (1) If, on the basis of an analysis of a relevant market, the Agency finds that the market lacks sufficient competition, it shall identify an operator or operators with significant market power in that market by means of a Decision. Before issuing this Decision, the Agency may request an opinion from the body responsible for the protection of competition.
- (2) By the Decision issued to the operator with significant market power, the Agency must order taking at least one of the measures from Articles 44, 45, 46, 47, 48, 49 and 50 of this Law. When determining these obligations the Agency shall take into account the principle of rationality and proportionality, in conjunction with an explanation of ordered measures. The Decision shall also contain realistic deadlines for the implementation of measures.
- (3) Upon the repeated identification of an operator as an operator with significant market power, based on the analysis conducted according to the Article 42, paragraph 1 of this Law, the Agency may change the scope of ordered measures.
- (4) If, during periodical analysis, it is determined that an operator no longer possesses significant market power, the Decision from paragraph 1 of this article shall be revoked.
- (5) If on the basis of the analysis of a relevant market, the Agency finds that there is sufficient competition in that market, it shall not identify any operator as an operator with significant market power. If this market was non-competitive before, the Agency shall be obliged to revoke decisions identifying the operators with significant market power, including the measures imposed by those decisions, by the means of a new decision.

- (6) The Agency shall decide on obligations of operators with significant market power on international markets jointly with other competent international bodies which are encompassed by that international market.
- (7) Any measure based on this Article, the Agency may carry out only based on previously held public debate with the operators, users and other stakeholders, in cooperation with relevant national or foreign body for protection of competition.

Obligation of Ensuring Transparency, Reference Interconnection Offer

Article 44

- (1) By means of the Decision from the Article 43, paragraph 1 of this Law, the Agency may order taking measures for the purpose of making information on providing services of interconnection or operator access available to the public, such as accounting information, technical specifications, network characteristics, and terms of use and prices of services. The Decision defines in more details the degree of information required, methods and deadlines for their publication, taking into consideration data confidentiality.
- (2) If the measure from the Article 45 of this Law, besides the obligation defined in the paragraph 1 of this Article, is imposed to an operator, the Agency may request from the operator to publish the reference interconnection offer for providing services of interconnection or operator access, (hereinafter referred to as Reference Interconnection Offer), within 90 days from the day of issuing the Decision.
- (3) Reference Interconnection Offer (RIO) shall be in line with actual capacities of an operator and real needs of other operators, and sufficiently unbundled so that other operators that require a specific service, do not need to pay for bundled options which are not needed for providing requested service. This offer shall contain the list of services unbundled in accordance with needs of other operators, and conditions thereof, including the prices and discounts or principles for establishing prices.
- (4) In case of a fixed network operator, offer described in the paragraph 2 of this Article must also contain a section for unbundled components of services of access via local access network, including usage of associated infrastructure elements.
- (5) If the offer from paragraph 2 of this Article is not in compliance with provisions of this Law or market conditions, after the public debate, the Agency shall have the right to order by Decision the amendment of the offer within 30 days. The Decision may also include the minimal list of offered elements.
- (6) Operators may also independently initiate the change of Referent Interconnection Offer.

Obligation of Providing Equal Treatment – Non-Discrimination

Article 45

- (1) By means of the Decision from Article 43 paragraph 1 of this Law, the Agency may order a measure of providing service of equal treatment in relation to interconnection or operator access.
- (2) Ordered measure of equal treatment shall ensure that the operator referred to in paragraph 1 of this Article applies essentially equivalent conditions and equal quality for providing service of interconnection or operator access to any operators providing essentially equivalent services, including those operators that are its branches or branches of a business organization connected to the operator.
- (3) By means of the Decision from Article 43 paragraph 1 of this Law, the Agency may order a measure of making certain parts of valid contracts on interconnection or operator accessible, taking into consideration data confidentiality.

Obligation of Accounting Separation

Article 46

- (1) The Agency may, by means of the Decision from Article 43 paragraph 1 of this Law, order taking measures for the purpose of keeping separate accounting records on business activities related to providing services of interconnection or operator access.
- (2) The measure defined in paragraph 1 of this Article, the Agency shall order for the purposes of controlling the fulfilment of measures from Article 45 of this Law or preventing unsubstantial

cross-subvention. This measure shall be ordered by the Agency in particular to a vertically integrated operator, and in doing so, may request from the operator to provide transparency of its wholesale or internal accounting prices. The Agency may determine the form and methodology of accounting.

- (3) Operator from paragraph 1 of this Article shall submit accounting records, pursuant to a request of the Agency, including information on revenues acquired from third persons.
- (4) For the purposes of fostering competition and open market, the Agency may publish information collected on the basis of the obligations from this Article, taking into consideration the degree of data confidentiality.

Obligation of Providing Access to Network Elements and Their Usage

Article 47

- (1) By means of the Decision from Article 43 paragraph 1 of this Law, the Agency may order taking measures in order to meet all reasonable requests for access to, and use of, specific electronic communications network elements and associated infrastructure, including the access network. The Agency shall order such a measure particularly in cases where it considers that the denial of access would hinder the establishment of a sufficiently competitive market at the retail level, or it would cause harm to the interests of end users.
- (2) The Agency may require the operator referred to in paragraph 1 of this Article, among others, to:
 - 1) negotiate in good faith with operators on requests of operator access;
 - 2) enable operator access to specified network elements, including unbundled elements of access network;
 - 3) carry out the interconnection of networks;
 - 4) not withdraw already granted operator access or use of facilities;
 - 5) provide specific services on a wholesale basis because of the resale of those services on the retail market;
 - 6) grant open access to technical interfaces, protocols or other important technologies that are indispensable for the interoperability of services or networks, including virtual networks as well;
 - 7) provide common accommodation for the equipment or other forms of common use of infrastructure facilities;
 - 8) provide facilities necessary for providing the interoperability of end-to-end services to users, including facilities for intelligent network services, distribution systems or roaming in mobile networks;
 - 9) provide access to support systems or similar systems, needed for ensuring fair competition in the course of providing services.
- (3) When assessing the scope of obligations from paragraph 1 of this Article, and in particular, when assessing whether the ordered measures are proportionate to desired effects, the Agency shall in particular evaluate:
 - 1) the technical and commercial viability of use or installation of new competitive equipment with regard to the nature and type of interconnection or access proposed and the dynamic of market and technology development;
 - 2) feasibility of providing the access proposed, in relation to the capacities available;
 - 3) initial investment by an operator from paragraph 1 of this Article, and the risks involved with such investment;
 - 4) the need of long-term competition protection;
 - 5) appropriate intellectual property rights;
 - 6) providing services deriving from international obligations of Montenegro.
- (4) The Agency may regulate in more details specific issues of this Article.

Obligation of Price Control and Cost Accounting

Article 48

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- (1) The Agency may order, by means of the Decision from Article 43 paragraph 1 of this Law, taking measures in relation to cost covering and price control of certain services that are provided for the purposes of providing interconnection or operator access.
- (2) The Agency may order taking measures from paragraph 1 of this Article, if it, based on market analysis, deems that an operator with significant market power, due to lack of efficient competition or for the purpose of suppressing it, might keep either excessive prices or too low difference among wholesale and retail prices.
- (3) In ordering measures from paragraph 1 of this Article, the Agency must take into account the risks, investments and ensuring an acceptable rate of the investments return of the operator.
- (4) Operator that was ordered to take measures of cost orientation shall provide evidence that prices are calculated based on expenses with an acceptable rate of investment return. While controlling fulfilment of such obligation, the Agency may apply the methods of cost based accounting independent from those applied by the operator. The Agency may request by a Decision from the operator to explain and correct its prices if necessary, whereupon the operator shall bear all the burden of eventual proving.
- (5) The Agency may prescribe a cost covering mechanism or methodology of pricing on the grounds of this Article, which shall be appropriate to purpose of improving efficiency and sustainable competition, the objectives of developing and improving the benefits for consumers. The Agency may use the comparison with prices on comparable markets or markets with developed competition, bearing in mind the specifics of the local market.
- (6) For the purpose of fulfilling obligations, the operator from paragraph 1 of this Article shall implement the cost accounting system determined by decision of the Agency. The Agency may determine the form and methodology of accounting which shall be applied by such an operator, including categorization and classification of costs and rules applied to distribution of costs. Compliance of the accounting according to this Article shall be verified by an independent auditor, whereas Statement concerning the compliance shall be published annually by the Agency on its web site.

Obligation of Selection/Pre-Selection of Operator

Article 49

- (1) The Agency shall order an obligation to an operator of a fixed and mobile telephone network, by means of the Decision from Article 43 paragraph 1 of this Law, of providing its subscribers with access to services of all other operators of publicly available phone services, specifically the following:
 - 1) by selection of any operator whenever dialling by using a prefix for that operator, or
 - 2) by pre-selection of a specific operator, based on the service code, which shall not limit the option from paragraph 1 of this Article.
- (2) Obligation referred to in Article 43 paragraph 1 of this Law can be imposed to an operator by, the Agency's Decision. Costs of establishing the service of selection/pre-selection of operator shall be paid by the operator.
- (3) Operator shall be obliged to set cost-oriented prices for operator access and interconnection with regard to selection and pre-selection of operator.
- (4) Operator may charge subscribers only a lump sum which covers the actual costs of provision of conditions required for providing operator pre-selection.
- (5) Operator shall be obliged to submit to the Agency cost-oriented prices for operator's access and interconnection related to operator selection and pre-selection, for filing and conformity assessment purposes.
- (6) According to the accepted model of forming electronic communication services prices, the Agency may prescribe limit for prices for operator selection/pre-selection service, to the extent that enables service prices to remain stimulating for users.

Obligation of Regulation of Retail Services Prices

Article 50

- (1) By means of the Decision from Article 43 paragraph 1 of this Law, the Agency may order the operator to take measures connected with regulation of retail services on an operator, if based

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on market analyses it determines that relevant market of services intended for end users is not competitive enough.

- (2) Measure from paragraph 1 of this Article shall be ordered only if assessed that by imposing all available measures based on Articles 44, 45, 46, 47, 48 and 49 of this Law, the desired targets would not be accomplished, or if the already ordered measures did not achieve desirable goals. Should this be the case, the Agency shall reconsider the efficiency of their retaining.
- (3) The measures ordered from paragraph 1 of this Article may include prohibition of:
 - 1) calculating excessive prices,
 - 2) obstruction of entry into market,
 - 3) restriction of competition by setting excessively high or low prices,
 - 4) giving undue advantages to a particular end user,
 - 5) unreasonable bundling of particular services.
- (4) When defining measures from this article, the Agency may prescribe one of the following methods of services' prices determination:
 - 1) retail price capping (*price cap regime*) ,
 - 2) individual tariffs regulation method,
 - 3) method of cost-oriented prices,
 - 4) harmonization of prices with prices on comparable markets
- (5) When regulating the measures from this Article, provisions of the Article 48, paragraphs 3, 4, 5 and 6 of this Law shall be applied.

Obligation to Provide Minimum Set of Leased Lines

Article 51

- (1) The Ministry shall determine conditions and manner of use of minimum set of leased lines and reassess every two years the scope of leased lines which shall be required to provide to users on the whole territory of Montenegro, in accordance with international methodology and practice, market and development needs, technological progress and objective abilities of operator.
- (2) If the Agency establishes based on market analysis within the meaning of the Article 42 of this Law that there is no effective competition in providing minimum set of leased lines, it shall order to the operator with significant market power, by means of a Decision from the Article 43 paragraph 1 of this Law, the obligation to provide the full minimum set of leased lines or only part thereof if it is assessed that it would be efficient that the rest of the set of leased lines is provided by other operators.

CHAPTER VI

UNIVERSAL SERVICE

Definition and Scope

Article 52

- (1) Universal Service shall represent a group of telecommunications services of specified quality which has to be accessible provided at affordable price to all end users, regardless of their geographic position on the territory of Montenegro.
- (2) Affordability of prices of Universal Service is provided by creating technical possibilities for users to monitor and control their spending, or through special tariff regimes for users with low incomes.
- (3) Regardless of the level of the electronic communications services market development, Montenegro shall guarantee the possibility to use Universal Service.
- (4) The scope of Universal Service shall include services related to:
 - (1) fulfilment of any reasonable user request for connection to public phone network on a fixed location, which enables usage of publicly available phone services;

- (2) providing the user with possibility to make local, intercity and international calls, the transfer of communications via facsimile machine and data transfer by speed suitable for functional internet access;
 - (3) providing the service of universal phone directory and universal service for providing information on subscribers (hereinafter referred to as universal directory enquiry service);
 - (4) providing public telephone booths services, satisfying reasonable needs of end users regarding geographical coverage and providing free emergency calls;
 - (5) ensuring certain benefits for end users – persons with disabilities - providing adequate access to publicly available telephone services and the use thereof, including access to services for emergency calls, public pay phones, directory and directory enquiry service.
- 5) Scope and type of benefits and measures from paragraph 4, item 5 of this Article, is determined by the Ministry with consent of the ministry in charge of social welfare affairs.
 - 6) Criteria for assessment of reasonableness of requests and needs from paragraph 4, items 1 and 4 of this Article, shall be prescribed by the Agency.
 - 7) Agency shall monitor development of the Universal Service and suggest to the Ministry correction of the scope of the Universal Service, from the paragraph 4 of this Article.
 - 8) The Government may correct scope of services of the Universal Service upon Ministry's proposal, in intervals not shorter than two years.

Universal Directory and Universal Directory Enquiry Service

Article 53

- (1) The Universal Directory shall include information from the Article 120 of this Law, on all subscribers of publicly available phone services, who did not request prohibition of data publishing. Universal Directory is published in print and electronic form, with prior approval from the Agency regarding conformity of its form. For publishing the data in Universal Directory the Universal Directory operator shall not be charging the service of publishing the data on users and vice versa.
- (2) Universal Directory Enquiry Service shall provide information on all subscribers included in Universal Directory which is accessible to all end users including users of public pay phones.
- (3) The information from the Universal Directory shall be updated on regular basis or at least once per year, taking into consideration the way of its publication. Information given by the Universal Directory Enquiry Service shall be updated at least once in 60 days. Universal service operator which provides the Universal Directory and Universal Directory Enquiry Service shall immediately inform the Agency, if another operator of publicly available telephone services does not supply them with information from paragraph 1 of this Article within 30 days from the day of expiration of the last update deadline.
- (4) In case there is a joint user information database, the operator of this database shall make the information from such a database available to the Universal Directory operator, to the extent proportionate to the requirements of the Directory.
- (5) Universal service operator providing Universal Directory and Universal Directory Enquiry Service, shall process information received from different operators of the publicly available telephone network on equal basis.

Providing Universal Service - Determining Provider

Article 54

- (1) The Agency shall, by means of a decision, determine one or more operators of the Universal Service, for the period of 5 years, so as to ensure provision of Universal Service within the complete territory of Montenegro.
- (2) The Agency shall determine Universal Service operator by means of a public tender. In the event the public tender fails, the Agency shall determine by means of a decision the operator that has significant market power in provision of publicly available telephone services in fixed locations or the largest number of subscribers in fixed locations, respecting principles of efficiency, objectivity and transparency.

- (3) Subject of the public tender from paragraph 2 of this Article shall be the provision of one or more different services included in the Universal Service, in a particular area or complete territory of Montenegro.
- (4) Criteria for selection of an operator based on the tender referred to in paragraph 2 of this Article shall be in particular: capacities for provision of Universal Service or its segments in a particular area, costs of providing the service, price of the service and technological capacities of the network in the sense of planned expansion of volume and quality of Universal Service.
- (5) The Agency shall be obliged six months prior to expiration of the decision referred to in paragraph 1 of this Article, based on the information on provision of Universal Service and public debate conducted, to determine whether the quality of services is such that it is necessary to re-designate the operator of a particular service.

Prices, General Terms, Rights of Users of Universal Service

Article 55

- (1) The Agency shall monitor the development and price level of services from the scope of Universal Service.
- (2) The prices of individual services provided under the Universal Service, with a particular operator, shall be equal throughout the territory and for all users in Montenegro.
- (3) Universal service providers may under commercial terms offer price options or packages for subscribers with low incomes or subscribers with disabilities.
- (4) If the Agency establishes that the prices referred to in the paragraph 1 of this Article are too high with regard to the average monthly salary, the Agency shall require from the Universal Service provider to offer special tariffs or tariff packages for users with low incomes or disabilities, which are different from those that are provided for those purposes under commercial terms.
- (5) The Agency shall determine the manner of assessment of affordability of prices of services, scope of services and special packages and the Ministry shall, with consent a ministry in charge for social affairs, determine the categories of consumers which shall be considered as persons with low incomes or persons with disabilities.
- (6) Without prejudice to general obligations with regard to users' rights, an operator of Universal Service shall be obliged in particular to:
 - 1) determine unbundled prices and general terms of providing services, so that users of a particular service from the scope of Universal Service do not pay for the services that are not required or needed,
 - 2) in case the Agency adopts a Decision, subscribers shall be provided with one or more options to control spending:
 - bill itemization in accordance with Article 113 of this Law, free of charge selective outgoing call barring for preventing particular types of calls or calls to certain types of numbers,
 - pre-paid system for paying access to public telephone network and use of publicly available telephone services for users,
 - paying initial connection fee in instalments.

Quality of the Universal Service

Article 56

- (1) Upon the proposal of the Agency the Ministry shall adopt:
 - (1) parameters of quality of the Universal Service, its limiting values and methods of measurement;
 - (2) at least once in two year period the transfer speed, appropriate for functional access to Internet, including the deadline until which this shall be implemented, taking into consideration dominant access technologies, technological and economical rationality and aims of the electronic communications sector strategy;

- (3) content, form and the manner of publication of information on Universal Service quality.
- (2) Operators of Universal Service shall submit to the Agency the information on change of service quality within 30 days from the day when the service quality changed, and publish updated information on quality of those services at least once a year.
- (3) If the Agency has reasonable doubts regarding authenticity of the data submitted by a particular provider, it may order ex officio independent audit at the operator's expense. In case the independent audit confirms the authenticity of the submitted data, the Agency shall bear the expenses related to the audit.
- (4) If the measured values of quality parameters of a particular operator of Universal Service do not reach limiting values at least three times consecutively in one year, the Agency shall be entitled to initiate the procedure of selection of a new provider.

Compensation of Net Costs of Providing Universal Service

Article 57

- (1) Universal service operator shall be entitled to compensation of net costs, if the provision of services in accordance with obligations from Article 53, and Article 55 of this Law, causes net costs and represents an unfair burden.
- (2) Net costs in providing the service shall represent the difference between increase of total revenue and total costs incurred through fulfilment of obligations of providing universal service.
- (3) The methodology of calculation of net costs shall be prescribed by the Agency after performed public consultation process.
- (4) Operator of universal service shall be obliged to keep separate records for the costs originating from the measures taken according to the Article 53, paragraphs 4 and 5 of this Law from other costs of the service.
- (5) Universal Service operator shall be obliged to submit to the Agency by end of 6th month of calendar year, the statement of net costs and accounting records and information, used in the calculation of net costs for provision of service in the previous year, otherwise the operator loses the right to compensation on the ground of net costs.
- (6) The Agency or an auditor authorized by the Agency shall conduct an audit and approve the accounting statements and the information from the paragraph 5 of this Article.
- (7) If the Universal Service provider was chosen in a public tender, the Agency shall in its assessment take into account the costs of provision of the services offered by the operator in the public tender. The Agency shall take into account different costs than the ones offered by the operator in the public tender only in instances where conditions at the time of the public tender have changed and when the universal service operator objectively and transparently has proved the justifiability of derogations. The Agency shall make public the results of costs calculation and the result of audit of the information provided by the universal service provider.
- (8) If the Agency based on net costs establishes that provision of Universal Service represents an unfair burden to an operator of Universal Service, it shall determine, by means of a Decision, the amount of compensation that shall not exceed the amount of net costs. When determining this compensation, any intangible benefits obtained by the service provider, shall be taken into consideration.
- (9) The Agency may, for purposes of reducing net costs of providing Universal Service, after implementing a transparent procedure, require the Universal Service operator to apply certain technical or other solutions or implementation of offered interconnection contracts or cooperation with other operators, or acknowledge net costs up to the amount that would result from application of the requested solution.

Universal Service Financing

Article 58

- (1) Compensation for net costs shall be financed through contributions collected by all the operators.
- (2) The amount of contributions and methods of payment for a particular operator or provider shall be determined by the Agency in proportion to the share of their revenue generated from

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provision of public communications networks or services in the revenue of the electronic communications sector of Montenegro.

- (3) Operators shall pay their contributions directly to the provider of Universal Service within the deadlines and of the amount specified by the Agency in its decision.
- (4) Operators shall inform the Agency until the end of 6th month of the current calendar year on the amount of revenues they had during the previous year. If an operator fails to do so, the Agency shall consider the total revenue from paragraph 2 of this Article, to be the total revenue of the operator from the previous year, on the basis of data from the authority competent for public revenues.
- (5) If the Agency has a reasonable doubt as regards the truthfulness of the information reported by the operator, the Agency or an auditor authorized by the Agency may review the information and estimate the revenue. If the estimated revenue deviates from the reported revenue more than 3%, the Agency shall, in making its calculations, take the estimated revenue into account and cost of audit shall be paid by the operator.
- (6) The information on compensation of net costs of providing Universal Service, the manner in which these are allocated and used and on parts that were financed, shall be public. Each year, the Agency shall publish an Annual Report on compensation of net costs for providing Universal Service, calculated net costs, intangible benefits taken into consideration in the course of calculation of net costs, and contributions paid.
- (7) In the event that net costs caused by requirements based on obligations prescribed by the Article 55, paragraph 4 of this Law, exceed 1% of the revenue in the sector in that year, the Ministry shall correct those requirements or provide for the payment for the excess amount from the Budget of Montenegro.

CHAPTER VII

STATE OF EMERGENCY AND STRIKE

Universal Service in Time of Strike

Article 59

For the purposes of providing uninterrupted services, the operator of Universal Service shall be obliged in accordance with the Law to oblige and designate employees who shall enable uninterrupted provision of Universal Service during a strike or state of emergency.

Provision of Services in a State of Emergency

Article 60

- (1) Operators of public telephone networks and services are obliged to adopt a plan of measures to ensure the integrity of the public telephone network and to ensure the use of services in the event of large failure of the network, state of war or emergency, or natural or other disasters. These measures shall be applied during the entire course of duration of circumstances due to which they were adopted. The plan of measures shall be submitted at the request from bodies in charge of defence and safety, as well as to the other authorities on their request.
- (2) During the state of emergency, operators of electronic networks and services and owners of radio stations, at the request from a competent authority, shall adjust the use of their systems and equipment to such circumstances.
- (3) Measures referred to in the paragraph 1 of this Article shall primarily ensure the uninterrupted access to the emergency call number including the unique number 112.
- (4) The Ministry may prescribe in greater details the measures that shall be defined in the plan from the paragraph 1 of this Article.

Function of Priority in State of Emergency

Article 61

- (1) Operators providing public communications networks shall be obliged to adjust their networks so as to give priority to communications from certain network access points.
- (2) The Government shall determine access points and the groups of users with the right on priority network access points. Determining of access points and total number of their users shall be done in a manner that shall not represent a disproportional burden on the operator.

- (3) The Government shall reach a decision on the use of the function of priority during a state of emergency. If so is technologically justified for purposes of enabling the function of priority, the Government may request the operators to terminate the operation of other telephone connections or stipulate other measures that contribute to eliminating the state of emergency.

CHAPTER VIII

LIMITED RESOURCES

1. RADIO – FREQUENCY SPECTRUM

Bodies Competent for Management

Article 62

- (1) Radio-frequency spectrum is a limited natural resource which represents a good of public significance within the ownership rights and authorizations of Montenegro.
- (2) The competent state bodies shall, in accordance with acts of international law applied in Montenegro, ensure the effective and uninterrupted use of the radio-frequency spectrum and shall ensure the rights of Montenegro in orbital positions.
- (3) The Agency shall manage, supervise and control the use of the radio-frequency spectrum, in accordance with the Allocation Plan and the Assignment Plan, i.e. this Law.

Radio Frequency Allocation Plan

Article 63

- (1) Plan of allocation of radio-frequency bands shall define radio-frequency bands for individual radio communications services, and basic terms of use of radio-frequency spectrum, in accordance with international regulations in the field of radio communications.
- (2) Radio Frequency Allocation Plan shall be adopted by the Government,.
- (3) Radio Frequency Allocation Plan shall be published in the Official Gazette of Montenegro and on the Agency's web site.

Radio Frequencies Assignment Plan

Article 64

- (1) Radio Frequency Assignment Plan shall contain closer terms and the manner of use of individual radio frequencies pertaining to particular radio communications services, within particular radio frequency bands, in accordance with the Radio Frequency Allocation Plan.
- (2) Radio Frequency Assignment Plan shall be adopted by the Agency.
- (3) Radio Frequency Assignment Plan shall be determined by the Agency with consent of:
- (1) state bodies and institutions competent for civil air transportation and maritime transportation in relation to the plans for radio frequencies allocated for purposes of air and maritime traffic safety;
 - (2) state bodies competent for planning and management of radio frequencies concerning the plan related to the use of radio frequencies for purposes of national security and defence, and
 - (3) regulatory body responsible for programme content concerning the plan related to radio frequencies used for broadcast and in Amateur Radio Operators' Association of Montenegro.
- (4) In the course of adopting the Radio Frequency Assignment Plan, the needs of national security and defence, protection from natural and other disasters and needs of air traffic safety shall be taken into consideration.
- (5) Radio Frequency Assignment Plan, and any changes and amendments thereof, with consent of the ministry authorised for defence and ministry authorised for internal affairs shall be published in the Official Gazette of Montenegro and on Agency's web site.

Approval for Using Radio Frequencies

Article 65

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- (1) Natural and legal persons may use radio frequencies only based on a decision on approval of use of radio frequencies issued by the Agency (hereinafter referred to as approval of radiofrequencies).
- (2) Without prejudice to paragraph 1 of this Article, according to the Allocation Plan and international Acts endorsed by Montenegro, the Ministry shall determine which frequencies and under which conditions may be used without approval of frequencies.

Issuing Approvals

Article 66

- (1) The Agency shall issue an approval of frequencies in accordance with the procedure stipulated by this Law.
- (2) Approval for using radio frequencies is issued based on a tender procedure, according to procedure prescribed by this Law, only for radio frequencies intended for provision of broadcasting activities or when, in accordance with Article 68 of this Law, it is established that efficient use of assigned radio frequencies may be obtained only by means of limiting the number of approvals of radiofrequencies.

Procedure of Issuing Approvals of Frequencies

Article 67

- (1) The Agency shall issue an approval of radiofrequencies, based on the submitted request for issuance of an approval for use of radio- frequencies which shall contain the following information:
 - 1) name and last name, address and birth certificate number for natural persons;
 - 2) name of business organization, headquarters, code and registration number for legal persons;
 - 3) statement on legal representative for legal persons;
 - 4) explanation on the necessity and intended purpose of use of radio frequencies, and
 - 5) technical solution, with information on geographic area of use and location of the transmitter, calculation of propagation and service zone, antenna system and characteristics of radio emission, efficiency of frequency use, environmental impact and impact on operation of other radio communications systems.
- (2) The Agency shall be obliged to issue an approval on radiofrequencies within deadline shorter than 45 days from the day of submission of the request, except in cases of assignment of radio frequencies through tender procedure when the deadline must be shorter than eight months, i.e. sixth months from the day of initiative submission, by a regulatory body for programme content.
- (3) The Agency shall deny the request, if it is established that:
 - 1) the submitter had an approval revoked due to his fault in the last five years;
 - 2) assignment of radio frequencies would not be in accordance with the efficient use of the radio frequency spectrum or it is not in accordance with the Article 22 of this Law;
 - 3) operation of radio equipment might cause unavoidable harmful interference to other electronic communication systems or equipment;
 - 4) radiofrequencies for which request is submitted are not available;
 - 5) request is not prepared according to Radio Frequency Assignment Plan or Radio Frequency Allocation Plan.

Obtaining Stakeholders' Opinions

Article 68

- (1) If the Agency finds that there is an enhanced interest in particular radio frequencies which could exceed the available frequency span and thereby question the efficient use thereof, it shall require the opinion of stakeholders concerning the conditions of use of frequencies, market value of frequencies and on limiting the number of approvals for radiofrequencies.
- (2) The call for submission of opinion shall be public, and the deadline for its submission shall not be shorter than 30 days.

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- (3) The Agency shall be obliged to maintain the secrecy of information from submitted opinions of stakeholders regarding the market value of radio frequencies, or such information marked as secret.
- (4) If the Agency, on the basis of the obtained opinions of stakeholders, establishes that allocated radio frequencies would not be sufficient for all stakeholders or if it directly receives an initiative for public tender from the regulatory body for programme content, it shall be obliged to implement tender procedures for the assigned radio frequencies allocation.

Implementation of Public Tenders

Article 69

- (1) The Agency shall carry out the tender procedure, according to the Article 68 of this Law, through a specially appointed commission which may include persons not employed in the Agency and who have no conflict of interests.
- (2) In the case of tender for radio frequencies for the provision of broadcasting activities, the Committee and criteria shall be appointed in cooperation and with consent of the regulatory body for programme content.
- (3) Tender issued by the Agency shall contain:
 - 1) assignment of radio frequencies which are subject of the public tender, the radio communications services to be provided thereby, and the areas or locations where such radio frequencies are to be used;
 - 2) conditions, requirements and qualifications to be met by the bidders, and which must be in compliance with legal regulations on spatial planning;
 - 3) criteria for selection of the most favourable bid, the method of their application, and possible restrictions to be taken into account in the evaluation of bids;
 - 4) minimum amount of fees for effective use of radio frequencies and payment methods;
 - 5) deadline and manner of submission of bids, including the obligation to submit a summary on important elements of the bid;
 - 6) address, place and date, and time of public opening of bids;
 - 7) place, time and contact person from whom the interested parties may obtain the tender documentation, the price of tender documentation, and the method of payment for such documentation;
 - 8) contact person from whom the bidders can obtain additional information;
 - 9) deadline for informing the bidders on the decision made;
 - 10) other rules of tender procedure in accordance with the law.
- (4) Minimum amount of additional fee from item 4 of paragraph 3 of this Article shall be determined by the Ministry.
- (5) When the subject of public tender are radio frequencies intended for broadcasting, the Agency shall reach a decision on introducing tender procedure on initiative or with consent of the regulatory body for programme contents.
- (6) Tender for assignment of radio frequencies for broadcasting shall, in addition, contain conditions which a bidder must fulfil regarding programme contents and other conditions according to media regulations.
- (7) The price of tender documentation from paragraph 3, item 8 of this Article shall be determined by the Agency in the amount that covers production of such documentation.
- (8) Upon completion of the tender procedure, the Agency shall reach a decision, which shall be published in the Official Gazette of Montenegro, and on the Agency's web site.

Deadline for Submission of Bids

Article 70

- (1) The deadline for submission of bids shall not be shorter than 30 days, or longer than 90 days from the day of tender publishing.
- (2) The Agency shall not accept bids, amendments or supplements thereof, which have been received after the expiry of deadline referred to in paragraph 1 of this Article. If such bids are sent by mail, they shall be returned to the sender sealed and without being previously opened.

- (3) The Agency shall be obliged to preserve the secrecy of bidders list and bids submitted until the expiry of deadline.

Tender Documentation

Article 71

- (1) In tender documentation, the Agency shall clarify all clauses from the decision on launching public tender, stating the selection criteria and indicating which additional documents are mandatory for the bids to be deemed acceptable.

Procedure of Public Opening of Bids

Article 72

- (1) Opening of bids shall be public. Commission referred to in paragraph 1 of Article 69 of this Law shall keep minutes on the procedure of opening bids, which shall also contain an archive number of the offer and in cases of an anonymous tender, data on the title or code of the bidder and the bidding price.
- (2) Business secrets of bidders, provided in submitted documentation, can not be publicly disclosed or used for other purposes.
- (3) At the public opening of the bids it shall be verified whether the bids contain all documents required by tender documentation, and summaries of important elements of each bid, wherein the contents of documentation submitted are not presented. Only bids delivered within the set deadline and correctly completed and marked shall be opened.
- (4) In the decision on launching the public tender, the Agency may stipulate the minimum number of bids that meet the tender conditions, needed for tender procedure to be deemed successful. If this is not the case, a tender shall be successful if at least one such valid bid was received.

Review and Evaluation of Bids

Article 73

- (1) Upon completion of public opening of bids, the commission referred to in paragraph 1 of Article 69 of this Law shall first determine whether all documents from the bid meet the tender specifications and whether they are in accordance with the Law. Commission shall exclude from the further procedure bids that are not in accordance with the Law and tender documentation.
- (2) After reviewing and evaluating the received bids, the commission shall submit a report to the body that brought the decision on launching the tender procedure, in which they present the evaluations of bids and a rank list according to fulfilment of selection criteria in the tender documentation.
- (3) In the course of reviewing and evaluating the bids, the commission shall take into account only the criteria for selection of the most favourable bidder laid down by the Law and decisions from the Article 69 paragraphs 2 and 3 of this Law and the tender documentation, and in particular those that enable a more efficient use of radio frequency spectrum and the promotion and protection of competition.

Continuation of the Procedure

Article 74

- (1) Following the receipt of the report on evaluation of bids by the commission referred to in paragraph 1 of Article 69 of this Law, the Agency shall proceed with procedure according to general administrative procedure. Each qualified bidder that meets the requirements of the tender shall have the status of a party in the procedure.
- (2) Based on evaluated bids the Agency shall issue a certain number of approvals defined by the decision on assignment of the available radio frequencies. The Agency shall issue an approval within deadline not longer than three months from the expiration of the deadline for submission of bids and inform the public on its decision.
- (3) The Agency may cancel the procedure of issuing or amending approvals for use of radio frequencies, only for the purpose of additional harmonization, review or activities in accordance with binding international regulations.

Contents of Radio Frequency Approvals

Article 75

- (1) Radio frequency approval shall contain:
 - 1) information on the holder of the approval for the use of radio frequencies;
 - 2) radio frequencies assigned;
 - 3) data on location and area of coverage;
 - 4) validity period of the approval to use radio frequencies and
 - 5) terms of use of assigned radio frequencies.
- (2) The approval for use of radio frequencies for broadcasting purposes, in addition to information from paragraph 1 of this Article, shall also contain identification of the program and requirements in relation to programme contents according to law.
- (3) Users of radio frequencies shall be obliged to report to the Agency any changes in relation to information specified in paragraph 1, item 1 of this Article, within 30 days from the onset of such changes.

Terms of Use of the approved Radio Frequencies

Article 76

The Agency may foresee such conditions in radio- frequency use approvals that specify:

1. purpose of service or type of network and technologies for which the right to use radio frequencies is granted, including, where applicable, exclusive use of radio frequencies for transfer and emission of a specific content or specific audio-visual service;
2. measures to ensure efficient use of radio frequencies, including, where appropriate requirements regarding coverage or signal strength ;
3. technical and operational conditions necessary for avoidance of harmful interference and limitation of exposing the population to electromagnetic radiation;
4. duration of the right to use radio frequencies;
5. transfer of assigned rights to use radio frequencies and conditions for such a transfer;
6. payment of fee;
7. additional obligations which bidders accepted and obliged themselves to in the tender procedure;
8. obligations regarding international regulations applicable in Montenegro pertaining to radio frequencies.

Duration of Approval

Article 77

- (1) The Agency shall issue approvals for use of radio frequencies for the period not longer than fifteen years, with the exception of approval for aeronautical and maritime mobile services issued with the validity time until the termination of their use.
- (2) The Agency shall issue temporary approvals for use of radio frequencies intended for research, measurements and certification of radio-communication equipment for a restricted area of coverage for no more than 90 days.
- (3) The Agency shall issue temporary approvals for use of radio frequencies allocated for extraordinary events for the maximum period of 60 days, and in extraordinary circumstances for the period until these expire.

Extension of Approval Validity

Article 78

- (1) Approval may be extended, at the request of its holder, if all the conditions prescribed for use of such radio frequencies are met. Validity of temporary approval from Article 77 of this Law can not be extended.
- (2) Applications for extension of radio frequency approvals shall be submitted to the Agency no less than 30 and no more than 90 days prior to expiration thereof.
- (3) In the event of granting extension, the Agency shall issue a frequency approval, for a period not longer than ten years.

Transfer of Right of Use

Article 79

- (1) Right to use radio frequencies can not be transferred or consigned to another natural or legal person without consent of the Agency, who decides on it based on previously submitted request in writing by holder of Approval.
- (2) Upon a request pursuant to paragraph 1 of this Article, the Agency shall verify whether the natural or legal person to which the right to use radio frequencies is proposed to be transferred meets all of the conditions laid down by the Law and other applicable regulations.
- (3) When request is related to the frequencies used for broadcasting, prior consent of the regulatory body for program content shall be obtained.

Amendment of Approval

Article 80

- (1) The Agency may, *ex officio*, amend a radio frequency approval if:
 - 1) the Allocation Plan, Assignment Plan, or regulations pertaining to the conditions for the use of radio frequencies are amended;
 - 2) there is a public interest that can not otherwise be met;
 - 3) the need for amendment arises for the reasons of efficient use of radio frequency spectrum;
 - 4) harmful interference or excessive emission can not otherwise be removed;
 - 5) The amendment is required by the international regulations the appliance of which is obligatory in Montenegro.
- (2) In cases referred to in paragraph 1 of this Article, after consultation with the holder of approval, the Agency shall issue an approval containing the amendment, including a reasonable period within which the holder must adjust the use of radio frequencies to the new conditions.
- (3) Holder of Approval which has been amended shall have the right to be assigned other equivalent radio frequencies if the reasons for amendment or revocation arouse through no fault on the part of the holder of approval.
- (4) In cases referred to in paragraph 1, items 3 and 4 of this Article, the holder of Approval shall adjust his activities according to the changes in radio frequency approval at his own expense.
- (5) The Agency may, exceptionally, extend the validity of radio frequency approval, if the cost of adjustment exceeds disproportionately upon the benefits held by the party approved to use the frequencies.
- (6) Should the amendments to a radio frequency approval be requested by the holder, radio frequency approval may be issued under the terms of this Law and in a manner that does not encroach upon the rights of other users of radio frequencies.

Revocation of Approval for Frequencies

Article 81

- (1) The Agency may revoke an approval for use of radio frequency either *ex officio*, at the suggestion of the party to whom that approval has been issued, or upon request of the State Prosecutor.
- (2) The Agency shall be obliged to initiate, *ex officio*, the procedure for revocation of a radio frequency approval for use of broadcasting frequencies if requested to do so by the regulatory body for programme contents, according to law.
- (3) The Agency may revoke a radio frequency approval at the request of the holder if the holder has met all obligations according to this Law and terms and conditions of the radio frequency approval.
- (4) The Agency shall revoke a radio frequency approval *ex officio* if it determines that:
 - 1) the request for the radio frequency approval contained false information;
 - 2) holder of Approval does not obey the prescribed conditions pursuant to this Law or conditions from the radio frequency approval;
 - 3) deficiencies that the Agency issued the order to be removed, have not been removed within the stipulated time interval;
 - 4) fees for use of radio frequencies were not paid irrespective of a notice previously issued by the Agency on outstanding obligations;
 - 5) it is not possible to otherwise avoid harmful interference.

- (5) Fees paid for the year in which the approval has been revoked shall be non-refundable.

Cessation of Validity of Radio Frequency Approvals

Article 82

- (1) The Agency shall issue a decision on the cessation of validity of radio frequency usage approval.
- (2) Radio frequency approvals shall cease to be valid by force of law:
- 1) upon expiry of the period for which they were issued;
 - 2) if the holder of the approval has ceased to exist;
 - 3) if the holder of the approval failed to start using the radio frequencies within one year of the issuance of the radio frequency approval, unless otherwise stipulated therein and
 - 4) with cessation of permission to perform broadcasting activity, in case of broadcasting frequencies.
- (3) Fees paid for the year in which cessation occurs are non-refundable.

Registry on Approved Radio Frequencies

Article 83

- (1) The Agency shall keep a Registry on radio frequencies approved for use.
- (2) Registry shall contain information on natural and legal persons to which radio frequencies were approved.
- (3) The Agency shall also keep records on locations of fixed radio-stations, coverage areas and radio corridors used based on the approval for use of radio frequencies. The Agency shall cooperate with the responsible body for spatial planning in order to enable efficient use of radio frequency spectrum and uninterrupted use of approved radio frequencies.

Fees for Use of Frequencies

Article 84

- (1) Applicant for approval of use of frequencies shall be obliged to pay a one-off fee to the Agency which corresponds to actual costs of processing the request.
- (2) The amount of the fee referred to in paragraph 1 of this Article shall be determined by the Agency
- (3) Holder of approval for radio frequencies shall be obliged to pay a regulatory annual radio frequencies usage fee to the Agency, which shall be used solely for covering the expenses of frequency spectrum supervision and management.
- (4) The Ministry shall prescribe methodology and manner of calculation of fees level, expressed in points and the Agency shall suggest monetary value of the point, based on estimation of total annual regulatory costs on the above mentioned basis, by which level of fees will be calculated and incorporated in the Financial Plan for the following calendar year. The level of fee shall be determined by the Government, by adoption of Financial Plan of the Agency.
- (5) Fees from paragraphs 1 and 4 of this Article shall not be paid by radio amateurs, emergency services, rescue services and public broadcasting services and users guaranteed so by international contracts.
- (6) Holders of radio frequency approval shall pay the fee in the Budget of Montenegro according to a price list determined by the Government following a proposal from the Ministry, which is used for recovery of expenses of administering of radio frequency spectrum. The amount of this fee shall not exceed 10% of the fee referred to in paragraph 3 of this Article.
- (7) When radio frequencies are assigned pursuant to a public tender, in which one of criteria for selection of operators is offered additional fee for use of radio frequencies, value-based fee reached on the tender, shall represent revenue for the Budget of Montenegro.
- (8) The fee from paragraph 1 of this Article shall be paid into the account of the Agency when submitting a request, and the fee from paragraph 3 of this Article for each current year, starting from the date of issuance of approval for use of radio frequencies.

- (9) The fee from paragraph 6 of this Article is paid to the Budget of Montenegro for each current year starting from the date of issuance of approval for use of radio frequencies, and for the fee from paragraph 7 of this Article at the latest 60 days from the day of completion of tender procedure.

Article 85

Radio and Telecommunication Terminal Equipment - R&TTE

- (1) Radio and telecommunication terminal equipment (hereinafter referred to as R&TTE) may be freely imported, introduced to the market, and used in Montenegro if it meets the conditions provided by this Law and regulations adopted based on this Law, and other acts regulating import, introduction to the market and use for individual components, systems or rights.
- (2) Check of fulfilment of the conditions referred to in paragraph 1 of this Article shall be performed by a commission established by the Ministry.
- (3) Provisions of paragraphs 1 and 2 of this Article shall also be applied on medical devices and active medical implants using radio waves and/or operator's services for its operation, as well as on integral parts or complete devices in vehicles.
- (4) Provision of this Article shall not be implemented on import, introduction to the market and use of R&TTE exclusively used by armed forces of Montenegro, police and security services of Montenegro, as well as foreign diplomatic missions.

Restriction of Electromagnetic Fields Strength

Article 86

Use of R&TTE equipment and elements of electronic communications networks must be such that total strength of electromagnetic fields at particular location does not exceed limits stipulated by special law.

2. NUMBERING

Numbering Plan and Addressing Plan

Article 87

- (1) Numbering Plan shall determine the type, structure, length, allocation and manner of use of the numbers for access to the public electronic communications networks and public electronic communications services.
- (2) Plan on Addresses shall contain definitions and structure of codes of the international signalling points, codes of national signalling points, mobile network codes, identification code of the data transfer network and manner of management.
- (3) Plans referred to in paragraphs 1 and 2 shall be adopted by the Agency.
- (4) The Agency shall administer Numeration Plan and Addressing Plan for the purpose of: providing efficient structuring and use of numerations and addresses; satisfying the needs of operators entitled to allocation of numerations and addresses according to this Law and providing allocation and use of numerations and addresses in a fair and non-discriminatory manner.
- (5) Amendments to the Numeration Plan and Addressing Plan that affect the numbering and/or addressing system to a great extent and which are technologically demanding to implement shall be implemented after conducted public consultation and shall be applied two years from the day of entry into force.
- (6) The Agency shall keep a registry on numerations and addresses from Numeration Plan and Addressing Plan.
- (7) The Agency shall publish on its website the data on the allocated numerations from Numeration Plan and addresses from Addressing Plan.

Unique European Emergency Number

Article 88

- (1) Public telephone networks shall be obliged to ensure use of the unique European emergency number 112.
- (2) The Ministry shall, in cooperation with the Ministry in charge of affairs of protection and rescue, stipulate methods, conditions and dynamics of introducing the unique European number for emergency calls, and the quality of service for handling calls to this number.
- (3) The Ministry shall define quality parameters for the service from paragraph 1 of this Article, its limiting values and methods of measuring those parameters.

Using the Numeration and/or Addresses

Article 89

- (1) The numeration and/or addresses referred to in Numeration Plan and Addressing Plan may be used pursuant to an approval obtained from the Agency on using numerations and/or addresses.

Procedure of Issuing Approval for the Use of Numeration and/or Addresses

Article 90

- (1) The Agency shall issue Authorization for use of numerations and/or addresses, by general administrative procedure and through tender procedure according to law. Tender procedure shall be conducted when it is estimated that shown interest surpasses availability of the approved numeration or address resource.
- (2) The Agency is obliged to issue Approval within 45 days as of the day of request submitting at the latest, except in case of tender, in which the deadline shall be three months.

Request for Approval for Use of Numeration and/or Addresses

Article 91

- (1) Request for approval for use of numeration and/or addresses may be submitted by operators to the Agency and shall contain the following data:
 - 1) name, headquarters and evidence of registration of the activity;
 - 2) information on the type, quantity and purpose of use of numerations and/or addresses applied for;
 - 3) needs assessment plan for numerations and/or addresses usage;
 - 4) planned date of beginning of use and dynamics of use of numerations and addresses; and
 - 5) additional data the Agency may need to manage the use of numerations and addresses.
- (2) Holder of approval shall be obliged to inform the Agency on data changes contained in paragraph 1 item 1 of this Article, within 30 days as of the day these changes occurred.
- (3) The Agency shall refuse to issue the approval for use of numerations and addresses if:
 - 1) the request for allocation of numerations and addresses contains false information;
 - 2) the applicant is not eligible for allocation of numerations and addresses pursuant to this Law and Numeration Plan and Addressing Plan;
 - 3) the applicant has already had a decision on allocation of numerations and addresses revoked in the last five years *ex officio*;
 - 4) the intended use does not justify the allocation of the requested quantity or type of numerations and addresses;

- 5) the requested resource is not available;
 - 6) request is not in accordance with the Numeration Plan and Addressing Plan.
- (4) The Agency shall be obliged to respond to the request from paragraph 1 of this Article within 30 days as of the day of request submitting.
 - (5) The Agency can resolve more similar request of the same applicant by one approval.
 - (6) The Agency shall prescribe content and form of the request and type and scope of data, enclosing with the request.

Content of Approval for Use of Numbers and/or Addresses

Article 92

Approval for use of numerations and/or addresses shall contain:

- 1) data on holder of the approval,
- 2) approved numerations and/or addresses,
- 3) purpose of use of the approved numerations and/or addresses,
- 4) beginning, deadline and dynamics of use of approved numerations and/or addresses,
- 5) terms of use of the approved numerations and/or addresses.

Terms of Use of Numbers and/or Addresses

Article 93

Holder of the approval for use of numerations and/or addresses:

1. may reserve numerations and/or addresses for a period of one year, with a possibility for extension for one more year at the most,
2. shall return the allocated numerations and/or addresses if they are not used in accordance with the plan and dynamics of use,
3. must use the allocated numerations and/or addresses in way prescribed by the approval,
4. shall pay an annual fee for using the allocated numerations and/or addresses,
5. shall meet the conditions for number portability according to this Law,
6. shall be obliged to use allocated numerations and/or addresses exclusively for the purpose for which those were allocated, not causing the damage to particular users' group,
7. shall be obliged to fulfil the obligations laid down in acts of international regulations related to numerations and/or addresses allocation and use, applicable in Montenegro.
8. Certain numbers from the approved numerations and/or addresses may be assigned for use to its end users.

Transfer of Rights for Use of Numbers and/or Addresses

Article 94

- (1) Right to use approved numerations and/or addresses, may not be transferred or consigned to other legal or natural person, without previous consent of the Agency.
- (2) The Agency shall affirm based on the request submitted in the written form, if legal or physical person on which transfer or consignment has been proposed, would fulfil all conditions established by the Law and other regulation, and based on this, the Agency shall decide if a compliance on transfer or consignment of numerations and/or addresses may be issued.

Amendment of Approval for Use of Numbers and/or Addresses

Article 95

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- (1) The Agency shall not amend *ex officio* a previously issued approval for use of numerations and/or addresses in case of amending the Numeration Plan and Addressing Plan, within 30 days from the day when the changes enter into force. In such instances approved numerations and/or addresses shall be replaced by the same quantity and type of resources with real deadlines for implementation which can not be shorter than 6 months.
- (2) The Agency may amend decisions on the assignment of numerations and/or addresses upon request of the holder of the right of use of numerations and/or addresses.

Revocation of Approval for Use of Numeration and/or Addresses

Article 96

- (1) The Agency may revoke *ex officio* the approval for use of numerations and/or addresses upon request of the holder thereof if :
 1. the holder of the approval for use of numerations and/or addresses does not meet the conditions laid down in this Law relating to assignment of numerations and/or addresses;
 2. the annual fee for the use of numerations and/or addresses was not paid in due time;
 3. the holder of the approval for use of numerations and/or addresses has not began to use the assigned numerations and/or addresses within two years from the date of the assignment;
 4. the numerations and/or addresses are not used in accordance with Article 93, paragraph 1, items 2 and 8 of this Law;
 5. the holder of approval for use of numerations and/or addresses has ceased to exist, and its legal successor has not submitted a request for the approval of the same numerations and/or addresses within 3 months;
 6. the holder of Approval for use of numerations and/or addresses has submitted request for revocation of approval;
 7. there are significant changes in the Numeration Plan and Addressing Plan and it is not possible to change the Approval , due to non availability of adequate resource.
- (2) The Agency shall submit the decision with an explanation on revoking the assigned numerations and/or addresses.
- (3) In cases where the revocation is a result of unpaid annual fee to the Agency, the deadline for revocation can not be shorter than thirty 30 days from the date of receiving the decision referred to in paragraph 2 of this Article.
- (4) Where the right to use numerations and/or addresses is revoked pursuant to the conditions stipulated in paragraph 1 of this Article, the deadline for revocation may not be shorter than sixty days from the date of receiving the decision.
- (5) The revocation of the numerations and/or addresses shall be conducted by way of disconnection from traffic by the operators of public communications networks, upon a decision obtained from the Agency.

Fee for Use of Assigned Numeration and/or Addresses

Article 97

- (1) The applicant for use of numerations and/or addresses shall be obliged to pay a one-off fee to the Agency or processing the request, which corresponds to actual costs and represents the Agency's revenue.
- (2) The amount of the fee referred to in paragraph 1 of this Article shall be determined by the Agency.

- (3) Holders of Approvals for use of numerations and/or addresses shall pay a regulatory annual fee to the Agency, which shall be used solely for covering the expenses of supervision and managing of numerical and address resources.
- (4) The Ministry shall define methodology and manner of calculation of fees level, expressed in points and the Agency shall suggest monetary value of the point, based on the estimation of total annual regulatory costs on the above mentioned basis, by which level of fees will be calculated and incorporated in the Financial Plan for the following calendar year. The level of suggested fee shall be determined by the Government, by adoption of Financial Plan of the Agency.
- (5) Fees referred to in paragraphs 1 and 3 of this Article shall not be paid by emergency calls services.
- (6) In case of ported numbers referred to in Articles 98 and 99 of this Law, the fee from paragraph 3 of this Article for such numbers shall be paid by the operator to whom the numbers have been ported.
- (7) The fee for use of the assigned numerations and/or addresses shall be paid to the Agency in advance for each year, starting from the date of issuance of the decision on assignment of numerations and/or addresses.

Mutual Obligations of Operators for Number Portability

Article 98

- (1) Operators of networks shall be obliged to enable number portability to their subscribers, in accordance with Article 112 of this Law.
- (2) Operators shall be obliged to adjust their networks for providing function of number portability at their own expenses and to bear the costs of maintenance of such facilities. Operators shall regulate mutual rights and obligations by the contract on inter-networks connection.
- (3) Handling costs and interconnection prices, related to number portability providing, must be cost oriented and must not discourage the use of this possibility.
- (4) Operator shall calculate the one-time amount for number portability to the operator in which network number is ported.
- (5) Operator of network in which call was generated shall pay costs to the operator in whose network call to the ported number is terminated, according to the interconnection contract.
- (6) Operator shall submit to the Agency the information on how many numbers were ported to other operators during the previous year, and how many numbers were ported to that operator during the previous year, until the 15th of January of the current year.

Number Portability Implementation

Article 99

- (1) The Agency shall, by means of a separate act, regulate issues related to number portability and shall ensure that the fee, paid by subscriber as one-time fee, does not discourage the use of this possibility and that is adequate to the actual operators' costs. At the same time the Agency shall not impose tariffs which would discourage competition.
- (2) Upon drafting the act from paragraph 1 of this Article, the Agency shall consider the manner of implementation of the number portability system, also including:
 1. technical feasibility and efficiency of number portability solution;
 2. technical parameters that are preserved during the number portability in order to ensure that the number portability will not result in degradation of service quality or network reliability;

3. the deployment schedule for number portability implementation, which shall be implemented no longer than three years and not sooner than one year from the effectiveness date of this Law;
4. technical trial of the proposed system for number portability;
5. need for updating the Universal Directory.

Emergency Service Numbers – Emergency Calls

Article 100

- (1) All operators of public telephone networks shall be obliged to ensure that users of publicly available telephone services, including users of public pay telephones, are able to call emergency call numbers including number 112 free of charge.
- (2) All operators of public telephone networks or publicly available telephone services, if technically feasible, shall be obliged to enable the emergency services, free of charge incoming call identification and call location.

Non-geographic Numbers

Article 101

Operators of public telephone networks or public telephone services shall be obliged to, if technically feasible and economically justifiable, provide an option for users outside Montenegro to make calls to non-geographic numbers determined in the Numeration Plan.

CHAPTER IX

USER RIGHTS AND PROTECTION OF USER INTERESTS

General Terms of Use

Article 102

- (1) All persons shall have the right to use public electronic communications services, under specified conditions and prices, if that is technically feasible.
- (2) For purposes of exercising the right referred to in paragraph 1 of this Article, operators of public electronic communications network, or publicly available electronic communications services, shall take appropriate measures and shall be obliged to make publicly available current prices, tariffs and general terms of providing their services.
- (3) The Agency shall prescribe which information the operators are obliged to publish and in which manner, and which shall be published by the Agency.
- (4) Public communications service users and operators shall have the right of objection to the Agency with regard to access to or provision of services.
- (5) A complaint may be lodged on the Agency decision before the Ministry within 15 days as of the day of Decision receipt.
- (6) The operator of public electronic communications network cannot assign obligations to its subscribers by which:
 - 1) the use of one service is conditioned by the use of the other service;
 - 2) optional right of the operator is contracted regarding delivery of the contracted service and the user is obliged to fulfil contracted obligation;
 - 3) the operator is given the right to keep the funds paid by the user who gave up on conclusion or fulfilment of the contract, while the same right is not established for the user, in case the operator gives up on conclusion or fulfilment of the contract;
 - 4) the user is obliged to pay disproportionately high fine in relation to actual damage in case of non-fulfilment of the contracted obligation;

- 5) the operator is given the right to set the price of a service in the moment of delivery or to increase the price of service without defining the right of a user to break the contract if the final price is higher than the previously contracted one;
 - 6) the operator is given the right to estimate whether a product delivered fits the contracted quality;
 - 7) the user is obliged to fulfil all contracted obligations, regardless of whether the operator has fulfilled its contracted obligations.
- (7) The operator is obliged to submit standard subscriber contract for each electronic communications service offered by the operator to the Council for consent.

User Rights

Article 103

- (1) The user of public communications services has the following rights:
- (1) to access public electronic communications network, within 15 days from the day of submission of the request, if this is technically feasible;
 - (2) to use services of electronic communications of publicly declared quality, availability and reliability;
 - (3) to get a detailed, itemized bill with prices of electronic communication services in a form that enables user controlled spending;
 - (4) protection of privacy of electronic communications, except in cases prescribed by the Law;
 - (5) rights resulting from the other Laws, regulating the field of consumer protection, unless otherwise stipulated by this Law.

Subscriber Agreement

Article 104

- (1) Operators, providers of public electronic communications services, and subscribers to these services shall define mutual rights and obligations by means of an Agreement.
- (2) Subscriber Agreement shall in particular contain: name and address of the operator/service provider and subscriber; deadlines and terms for installation of subscriber terminal equipment; overview of services subject to the Agreement, offered quality, prices and tariffs at the moment of conclusion of Agreement; type of offered maintenance services and methods of acquiring the most up-to-date information on valid tariffs and maintenance expenses; option of transferring and temporary shutting down of subscriber's terminal equipment; actions taken in case of failure to pay for services rendered; methods of refunding for services not rendered in accordance with the agreed quality and declared terms; procedure for resolving disputes; the manner of notifying subscribers of intended modifications to the conditions in the Subscriber Agreement and the manner of exercising subscriber's right to termination of the contract in such a case; duration of the Subscriber Agreement, and the conditions for extension, amendment and termination of the Subscriber Agreement; provision by which an operator is protecting itself from potential possibility of a user becoming a "virtual operator", i.e. to expand to other users the service provided to them based on the subscribers agreement.
- (3) Agreement on providing publicly available electronic communications services, concluded for a period longer than one year, shall contain a provision on subscriber's right to cancel the contract, with cancellation notice period not longer than three months.
- (4) Operator shall be obliged to inform subscribers at least 30 days prior to the eventual modifications of terms defined in the Subscriber Agreement. Within that notice period, subscribers may cancel the Subscriber Agreement, without any sanctions and without application of agreed notice period if changes are at the expense of subscribers, due to which they do not agree with such changes.

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- (5) An operator of public electronic communications network shall not determine any obligations to their subscribers in the event of network upgrading.

Connecting Terminal Equipment

Article 105

- (1) An operator of public communications networks or provider of public communications services shall grant any justified request by a subscriber for connecting radio or telecommunications terminal equipment, if such a request meets the requirements provided by the regulations from this field. The operator may deny such request only in the event of technical unfeasibility of connection or other justified reason.
- (2) Service user shall not be permitted to connect any radio or telecommunication terminal equipment, which does not meet the requirements prescribed by Article 86 of this Law to the public communications network.

Quality of Services

Article 106

- (1) Operators - providers of services shall be held responsible for quality of public communications services they provide.
- (2) Parameters for establishing the quality, methods of measurement and permitted limiting values of those parameters, for Universal Service shall be prescribed by the Ministry. For other types of electronic communications services, the Agency shall prepare experts foundation and the Ministry shall pass a separate act prescribing standards of quality, methods of measurement and publishing in accordance with international recommendations and service quality standards for individual services, or in the absence of the aforesaid, in accordance with best practise and measures of usual and technology guaranteed quality of standard equipment, and upon the prior consultations with stakeholders.
- (3) Operators, providers of public communications services shall be obliged to submit to the Agency, within a deadline defined by the Agency, information on quality of services they provide.
- (4) The Agency shall publish information referred to in paragraph 3 of this Article in the form of parallel overview, showing level of quality for the same type of service from different operators/services providers.

Outgoing Selective Call Barring and Restriction of Spending

Article 107

- (1) An operator, provider of services, shall be obliged upon a subscriber's request, to provide free of charge outgoing selective call barring to a specific number or a group of numbers.
- (2) An operator, provider of services, shall be obliged upon a subscriber's request, to provide free of charge restriction of spending for the accounting period.
- (3) The restriction referred to in paragraphs 1 and 2 of this Article can be used by a subscriber simultaneously or in uneven duration.
- (4) A one-off fee may be charged to the subscriber for activation of these services only in case the subscriber requires it more than two times during a calendar year.

Call Forwarding

Article 108

- (1) Operator providing public communications services, shall provide to all subscribers a simple and free of charge establishment of call forwarding service to any number in their network or in the network of another operator/provider, if so is technically feasible and would not incur disproportionately high costs.

- (2) In case that an operator refuses to provide call forwarding due to reasons referred to in paragraph 1 of this Article, the operator shall be obliged to submit to a subscriber written information including detailed explanation of the reasons for rejection.
- (3) A subscriber shall be enabled, in a simple manner and free of charge, to prevent automatic call forwarding by third persons to his terminal equipment.

Units and Manner of Service Accounting

Article 109

- (1) Only internationally accepted units, both basic and derived from SI system, shall be used as a measure of quantitative and qualitative extent of services provided at the Montenegrin market of publicly available electronic communications services.
- (2) Only actually accomplished extent of services shall be used for accounting.
- (3) It shall not be allowed to use derived units which are not codified by the international SI system or derived qualitative and quantitative indicators based on which expected, but not actually accomplished extent of services would be accounted.
- (4) Performed service shall be accounted exclusively on a single base that defines it in the actually accomplished extent or quality and which is non-discriminatory.

Number Portability

Article 110

- (1) Subscribers of public telephone services, including subscribers of mobile services, upon a request, shall have the right to reserve their numbers and retain them, in the following cases:
 - 1) in case of geographic codes, on a specific geographic location,
 - 2) in case of non- geographic codes, in any location.
- (2) Right to portability in a specific geographic location, shall represent the right of a subscriber to keep the existing number when changing geographic location of termination point of his terminal equipment within the same network, including the right to keep the same subscriber number when changing a service.
- (3) Operators of public communications networks and service providers in fixed networks shall enable geographic portability to their subscribers if so is technically feasible.
- (4) Operators of public communications networks and service providers in mobile networks shall enable their subscribers' number portability when switching operator or service provider.
- (5) A subscriber can not request number portability from a network providing services in a fixed location, to mobile network and vice versa.

Directory and Directory Enquiry Service

Article 111

- (1) Operators shall be obliged to arrange, publish and regularly update public directory of all subscribers except those who requested in writing (special request or contract) not to be listed in the directory.
- (2) Subscribers shall be provided with: free of charge information on volume and purpose of information entered into the directory prior to its publication, on possible use of their personal information, on minimum and maximum amount of information that can be found in the directory, on the right to free of charge entry of information according to personal preference to the extent that such information is compliant to the purpose of the directory, on the right to free of charge changes, updates or deletion of their personal information from the directory.
- (3) Legal persons can request not to list such information in public directory, which is used for their identification and communication therewith, except of the authorities in charge of the defence and security affairs.

- (4) The directory shall be published in printed and electronic form.
- (5) Information from the directory shall be easily accessible to all users through public directory enquiry service.
- (6) A Universal Directory Inquiry Service operator shall provide publicly available directory enquiry service, which shall provide all the users, including the users of public pay phones, with information on numbers of subscribers of all public communications networks in Montenegro.

Service Security

Article 112

- (1) Operators of public communications networks and services shall undertake appropriate technical and organizational measures for the purpose of providing security of service and protection of their users from malevolent activities, electronic sabotage and frauds performed by third persons and abuse of any kind.
- (2) In case there is a possibility of influencing security of communications, an operator shall inform the Agency and the user in due course.
- (3) Operators of public communications networks and services shall not request from a user of their services to compensate for expenses arising from a call (communication) that did not result in access by the user to desired service, or expenses occurred as a consequence of lack of security of a service from paragraph 1 of this Article.

Right to Itemized Bill

Article 113

- (1) Operators providing public communications services shall use equipment that accurately registers information on communications service rendered, for the purpose of precise calculation of those services. They shall also be obliged to provide the users with that information, or issue, free of charge, the itemized bill, unbundled to the extent that enables easy overview of all items and verification of the calculation of the amount. Such itemization shall not include calls to toll free phone numbers, including emergency numbers.
- (2) Itemized bill, referred to in paragraph 1 of this Article, which represents the main bill breakdown, shall be supplied to the subscribers free of charge, while delivering any bill, as well as on the operator's web site, unless the requestor informs the service provider that he/she does not wish to receive the itemized-unbundled bill.
- (3) Itemized bill for publicly available telephone services referred to in paragraph 1 of this Article, in a fixed location, shall contain separately the following information: accounting period; initial connection fee; the amount of the subscription fee; type and amount of all other possible lump sum payments in the accounting period relating to provision of service for which the bill is issued; type and amount of all possible monthly lump sum payments or non-periodical instalments; number of calls and their duration, number of accounting units, individual price per accounting unit, and amounts appearing separately for: local calls, intercity calls, international calls, calls to mobile public communications networks (roaming calls may be shown through the type and amounts of the other services rendered), calls to numbers of added value services and data transfer calls; type and amount for other services rendered; total amount of the bill.
- (4) Provision from paragraph 3 of this Article shall be applied to other publicly available electronic communications services.
- (5) If an operator offers a higher degree of bill itemization, then that shall be published in general terms. If such information is offered for a fee, the prices thereof shall be formed so to reflect actual costs, occurring on the basis of further itemization.

Objection and Complaint

Article 114

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- (1) Subscribers of public communications services shall have the right to object to the approach and quality of services provided by operators, and in relation to bill for the services provided.
- (2) Subscriber submits the objection on the issues of approach and quality to the operator immediately upon identifying such circumstances, and the objection to a bill, subscriber shall submit 8 days from the reception thereof, in writing.
- (3) An operator, provider of communications services shall make a decision within 15 days from the day of reception of the objection and deliver a relevant written notification to the user.
- (4) Until the adoption of decision on the objection, the user shall pay the undisputed amount of the bill, or the amount corresponding to the average bill for three previous accounting periods.
- (5) If the operator denies the objection by the user, or does not make a decision within 15 days from the day of submission of the objection, the user has the right to submit the complaint to the Agency within the following 15 days, and the Agency shall make a decision within 30 days.

Restriction of Service to Subscribers

Article 115

- (1) Operators, providers of public communications services, may restrict the access to their services, i.e. disconnect a subscriber and terminate the subscriber contract if a subscriber fails to settle his liabilities or breaches other conditions laid down in the Subscriber Agreement. Provider shall stipulate in the general conditions which measures shall be taken for a specific breach and the deadline within which they are implemented. The measure and deadline selected must be proportionate to such a breach and non-discriminatory.
- (2) In the event of breach of contractual obligations, operators shall be obliged to send, in a reliable manner, a written notice stating the reasonable deadline within which the subscriber must remove the irregularities, or make the payment, and point out the actions that the service provider shall take, if the subscriber after the expiration of the deadline still does not end the breach of contract or does not make the payments.
- (3) Regardless of provisions from paragraph 2 of this Article, operators shall not be obliged to notify subscribers of measures in advance according the law if the breach causes an immediate and serious threat to public order, public safety or health, or causes serious commercial or operational damage, and if such a measure is stipulated in the general terms.
- (4) If a subscriber submits an objection or complaint on the amount of a bill or execution of individual rights of users according to this Law and the law regulating competition protection, the operator shall not act in accordance with paragraph 1 of this Article until the final decision is reached by the Agency, if the subscriber made payment for the undisputable amount of the bill, or the amount corresponding to the average value of the last three undisputable bills.
- (5) Until the final decision by the Agency, operator, provider of communications services, shall not cancel provision of network functions or services to the user that are not subject to the dispute, if technically feasible. Restriction related to access and use of an emergency number "112" shall in particular be prohibited.
- (6) If a subscriber did not pay for the undisputed part of the bill within the given deadline, or continues to breach contractual obligations from Subscriber Agreement, or does not act in accordance with the final decision by the Agency, operators may permanently disconnect such a subscriber, or terminate provision of all services. Subscriber Agreement shall, from that moment on, be considered unilaterally cancelled, regardless of whether the subscriber's line was disassembled and terminated or the subscriber has only the software blockade of all calls.
- (7) From the moment of termination of providing services referred to in paragraph 6 of this Article, operators shall not have the right to request payment of monthly subscription fee or any other claims, except those incurred during the period the Subscriber Agreement was in force.

Restrictions on the Side of Operators

Article 116

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- (1) In cases when required for reasons of an upgrade, regular maintenance or in the events of repairing of faults in the network, operators, providers of publicly available electronic communications services, may, without prior consent from the subscriber, temporarily restrict or interrupt access to their services, provided they issue a notification at least one day in advance to the media, the Agency and the authorities responsible for implementation of secret surveillance. In cases of greater extent of restrictions and longer restrictions, an operator – services provider shall be obliged to notify the subscribers as well.
- (2) Restrictions or interruptions referred to in paragraph 1 of this Article shall last for so long as required for purposes of performing relevant works, or removing the obstruction.
- (3) An operator performing software or hardware upgrade in its network or implementing the new services that influence lawful interception of communications shall be obliged to inform the bodies responsible for lawful interception thereof at least three months prior to putting new services into operation.

Right to Reimbursement

Article 117

- (1) Operators, providers of electronic communications services, shall define the rules of reimbursements to users, in case there is a discrepancy with regard to quality and availability of their service in relation to parameters stipulated.
- (2) Subscribers shall have the right to request from operators, providers of communications services to be reimbursed for any direct or indirect loss occurred through faults in operator or service provider's performance.
- (3) Operators, providers of services, shall not be obliged to reimburse the damage to users, if poor quality of the service provided or restrictions of access to network or service occurred due to circumstances to which operators could have no influence.

Public Influence

Article 118

- (1) The Agency and other public bodies shall be obliged to take appropriate account of the opinions of interested public, when shaping electronic communications market and adopting regulation that will significantly influence such market.
- (2) Deadline for collection of opinions from the interested public shall be publicly announced and shall not be shorter than 30 days. Upon expiration of this deadline the opinions shall be published on the Agency's web site or web site of another body, with clear clarifications on accepted and unaccepted suggestions from the public. Information and data of confidential nature shall not be published on the web site.

CHAPTER X

PROTECTION OF ELECTRONIC COMMUNICATIONS

Confidentiality of Communications

Article 119

- (1) Concept of confidentiality of communications, in this Law, shall apply to:
 - 1) the content of communications,
 - 2) the user data,
 - 3) traffic data and location data relating to communications,
 - 4) unsuccessful attempts to establish communication.
- (2) All forms of surveillance, taping, or storage of communications content and data, or interruption and surveillance thereof, by other persons, without consent from user of such communication, are hereby prohibited, except in cases where it is necessary for the purpose of conveyance of a

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message (fax message, electronic mail, voice mail, SMS messages), or when there is a legal authorization according to Articles 125 and 126 of this Law.

- (3) The use of public electronic communications networks to store data or gain access to information and data stored in subscribers' or users' terminal equipment, shall be permitted in cases where the subscriber or user were provided with information of the purpose of processing and storage of such data, and when the subscriber or user were given an opportunity to refuse such possibility.
- (4) Exceptionally, paragraph 3 of this Article shall not be applied to storage or access exclusively used for sole purpose of facilitation and provision of transmission of contents via electronic communications network.
- (5) Operators of public communications networks and services, their agents, employees, representatives, and other parties under their responsibility, shall be obliged to protect the confidentiality of communications, even after completion of activities in which they were obliged to protect such confidentiality.
- (6) Subscribers or users may record communications, but they shall be obliged to inform the sender or recipient of the communication thereof or adjust the operation of the recording device so that the sender or recipient of the communication is informed of its operation.
- (7) Prohibition referred to in paragraph 2 of this Article, shall not be applicable to taping of communication and related data on the traffic within legal business practise used for purposes of evidence of commercial transactions or other business communications, upon the user's explicit request or within organizations receiving emergency calls for the purpose of registration, identification and handling thereof.

User Data

Article 120

- (1) Operators providing public communications networks' services shall be obliged to register subscribers of their services of fixed telephony and users of their services of mobile telephony (both pre-paid and post paid) and internet.
- (2) Registration in the meaning of the paragraph 1 of this Article shall imply recording of the following user data: name and surname or title of the business organization subscriber and its organizational form; identity number for natural persons, and tax and registration numbers for legal persons; address of the user: allocated user number , i.e. user's ID;
- (3) Operators providing public communication network services, may keep records on the following data for their subscribers: academic, scientific or occupational title of the user – at his request, activity of the user – at his request; on the basis of payment, additional data, provided that this does not affect the interest of third parties.
- (4) Data on user may also be used for other purposes exclusively upon user's explicit consent: preparation, concluding, execution and termination of Subscriber Agreement; billing of services and for the needs of responsible state bodies in accordance with this Law.
- (5) Operator shall be obliged to store record data on users within Subscriber Agreement duration and at least one year more, from the day of termination of service providing possibility.
- (6) The way of registering users of services of public communication networks and other issues referring to this operator obligation, shall be regulated by the Ministry.

Traffic Data

Article 121

- (1) Traffic data relating to subscribers and users processed and stored by a provider of publicly available electronic communications services must be erased or made anonymous after expiration of five year period and when there is no need for storing data in the sense of Article 126 of this Law.

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- (2) Traffic data required for billing and interconnection payments may be processed only until the end of the claims expiry period, with informing users on the purpose and deadlines of processing such data.
- (3) Operators of public communications networks and services may, for the purpose of marketing services and value added services, process traffic data to the extent and duration proportionate to requirements of such service, and on the basis of prior consent from the user to whom such data are related to and if the user has the right to withdraw the consent at any time.
- (4) The rights, from paragraphs 2 and 3 of this Article, shall be restricted to persons, employed with the operator, responsible for billing, expense accounting, traffic analysis, customer objections, fraud detection, electronic communications services marketing, or provision of value added services, and restricted to the extent that is necessary for conducting such activities.

Identification Restrictions

Article 122

- (1) The operators of public communications networks and services offering calling line identification shall be obliged to:
 - 1) offer the calling user, before each call, to use the possibility of preventing the presentation of the calling line identification, in a simple manner and free of charge,
 - 2) offer a subscribers being called a possibility to prevent the identification for all incoming calls, with a reasonable use of this option in a simple manner and free of charge.
- (2) The operators of public communications networks and services offering calling line identification, shall be obliged to enable the subscriber being called, to use in a simple manner the possibility of rejecting the incoming call, before establishment thereof, when calling line identification is prevented by the user or subscriber dialling the number.
- (3) The operators of public communications networks and services offering identification of the line that is connected shall be obliged to enable the called user, to use the possibility, using simple means and free of charge, of preventing the identification of that line – identification of the calling number.
- (4) Notwithstanding provision from paragraphs 1, 2, and 3 of this Article, operator may suspend the measure of line identification prevention:
 - 1) temporarily, upon a request from a user requesting to trace malicious and nuisance calls. The operator shall process, store and make available data on identification of the user calling, in accordance with a special law;
 - 2) according to a written request from state bodies, including ambulance, police, army and fire department services, for purpose of responding such calls, regardless of the lack of subscriber's consent;
 - 3) upon a request from a state body, for purposes of processing and storing data on identification, in accordance with Articles 126 and 127 of this Law.

Location Data

Article 123

- (1) Operators of public communications networks and services, may process location data other than traffic data, in the event this data is rendered anonymous or with a prior consent from the user, to the extent and in duration necessary for provision of added value services. Prior to obtaining consent from the user or subscriber, an operator shall introduce them with the type of location data that will be processed, and which is not traffic data, as well as on duration of processing and possibility of forwarding such information to third persons. Operator shall provide the possibility for the users to withdraw at any time their consent for processing these data.
- (2) Under conditions when users or subscribers have consented to the processing of location data other than traffic data, they shall have the possibility, using simple means and free of

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charge, of temporarily refusing the processing of such data on the occasion of each connection to the communication network or each transmission of a communication.

- (3) Processing the location data, other than traffic data, may only be allowed to persons authorized by the operator or provider of public communications services or by third party providing value added service and the processing must be restricted to the minimum extent that is necessary for the provision of the value added service.
- (4) Exceptionally from paragraphs 1, 2 and 3 of this Article, operator shall be obliged to store location data listed in Article 127 of this Law for the needs of authorised public authorities.

Unsolicited Communication

Article 124

- (1) The use of automat voice systems, without human intervention (automated call machine), fax machines or electronic mail (e-mail), for making calls to subscribers' telephone numbers for the purposes of direct marketing, may only be allowed if subscribers have given their prior consent.
- (2) It shall not be contrary to the provision from paragraph 1 of this Article, if natural or legal persons receive contact information for electronic mail from their customers for marketing of their own or similar products or services, but they shall be obliged to give their customers the possibility at any time, free of charge and using simple means, of giving remarks or preventing such use of their electronic contact information.
- (3) Electronic communications used for the purposes of marketing shall not be allowed without prior consent from the subscriber except in cases referred to in paragraphs 1 and 2 of this Article.
- (4) The sending of electronic mail for the purposes of direct marketing where the identity of the sender is misinterpreted or concealed, or when there is no exact address to which the recipient may send a request that such communications cease, shall be prohibited.

Interception of Communications

Article 125

- (1) Operators shall be obliged to provide at their own expense appropriate hardware and software enabling lawful interception of communications.
- (2) Operators of public communications networks shall be obliged to provide conditions for legally founded interception of communications upon the receipt of an order of the competent body stating the point in the public network in which interception of communications is to be conducted, along with the data relating to the beginning of such a measure.
- (3) Operators, together with competent bodies upon whose request the legally founded interception is conducted, shall be obliged to provide a permanent record on this activity, and to protect collected information referred to in paragraph 2 of this Article as an official secret.
- (4) Authorised public bodies, with consent by the Ministry, shall prescribe conditions related to hardware and software referred to in paragraph 1 of this Article.
- (5) Operators shall be obliged to submit the evidence on providing hardware and software referred to in paragraph 1 of this Article to the authority in charge of issuing licenses.

Obligation of Storing Data

Article 126

- (1) Operators of public communications networks and services, shall have the obligation to store particular data on traffic and location, and relevant data required for identification of subscribers and registered users, of both legal and natural persons, to the extent to which

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such data were generated or processed by them, in order to ensure that such data are at the disposal of state bodies according to law.

- (2) Obligation of storing information, defined in the Article 127 of this Law, shall also be applied to data concerning unsuccessful calls (connection is successfully made, but did not result in answering or there has been a network management intervention) if such data is generated and processed, in case of telephone services, or logged, in case of internet services, by the operator.
- (3) Obligation referred to in paragraph 1 of this Article, shall not be pertaining to, and shall not be applied to data revealing the contents of electronic communications.
- (4) Procedures and conditions that are required to be followed and terms to be complied with, in order to gain access to stored data and collect the data are regulated by responsible persons referred to in Article 125 paragraph 4 of this Law containing: an obligation of operators to provide appropriate equipment and interface at their own expense, which enables the stored data to be collected, periods for storing the information, which shall not shorter than six months or longer than two years from the day when the communication took place; permitted delay, from the moment of receipt of the request, until data stored are transferred to a responsible body; keeping statistical information on annual level, other than personal information, on data successfully forwarded to a competent body, on cases of delays in forwarding, and on requests that could not have been granted.
- (5) Operators and competent bodies for enforcement of this Law shall regulate their relation by means of a special Agreement and define the type of services.

Categories of Data to be Stored

Article 127

- (1) Operators of electronic communications networks and services, shall store the following data categories:
 - 1) data required for finding and identification of a source of a particular communication in relation to fixed and mobile telephone networks (calling phone number; name and address of the subscriber or authorized user; in relation to internet access, Internet e-mail and Internet telephony (assigned user ID(s)); user ID and phone number assigned to any incoming communication to the public telephone network; name and address of a subscriber or authorized user to whom the Internet Protocol (IP) address was assigned, user ID or phone number assigned during the communication;
 - 2) data required for identification of destination of a particular communication: in relation to fixed and mobile telephone networks (selected or dialled phone number and, in cases of using additional services like call forwarding or call transfer, the number or numbers to which the call was forwarded; name and address of a subscriber or authorized user; in relation to internet access, Internet e-mail and Internet telephony (user ID or telephone number of the intended receiver of Internet phone call; name and address of a subscriber or authorized user and user ID of the intended receiver of communication;
 - 3) data required for identification of date, time and duration of a communication: in relation to fixed and mobile telephone networks (date and time of initiation and ending communication, duration of communication); in relation to internet access, Internet e-mail and Internet telephony: date and time of log-in and log-off service of Internet access, based on a certain time zone, along with the IP address, either dynamic or static, assigned by provider of service of Internet access to a certain communication, and used ID of a subscriber or authorized user; date and time of log-in and log-off service of Internet e-mail or the service of Internet telephony, based on a specific time zone;
 - 4) data required for identification of the type of communication: in relation to fixed and mobile telephone networks (telephone service used); in relation to internet access, Internet e-mail and Internet telephony (Internet service used);

- 5) data required for identification of communication equipment of a user or identification of purpose of such equipment: in relation to fixed telephone networks (calling and called telephone numbers); in relation to mobile telephony (calling and called telephone numbers; international Mobile Subscriber Identity (abr. IMSI) of the calling party and the party being called; international Mobile Equipment Identity (abr. IMEI) of the calling party and the party being called; IMSI of the called party; IMEI of the called party); in case of anonymous pre-paid services, date and time of initial activation of the service and location name (Cell ID) from which the service was activated; in relation to internet access, Internet e-mail and Internet telephony (calling number for dialling (dial-up) access; and digital Subscriber Line (DSL) or other termination point of communication originator;
- 6) data required for identifying location at mobile communication equipment: location name (Cell ID) at the beginning of communication and the data by which cells geographic location is identified through names of their locations (Cell ID) during any change of location of International Mobile Equipment (abr. IMEI) during the period for which the information on communication was stored.

Safety of Stored Data

Article 128

- (1) Operators of public communications networks and services shall be obliged to:
 - 1) provide for stored data to be of the same quality and degree of safety and protection as for the relevant data in the network;
 - 2) provide for, by means of appropriate technical and organizational measures, stored data to be protected from illegal or random damaging, random loss or modification, unauthorized or illegal storage, processing, access or disclosure;
 - 3) provide, by means of appropriate technical and organizational measures, stored data to be accessed only by persons with special authorization;
 - 4) destroy stored data at the end of the period stipulated for storage, with exception of those that have been accessed and which are saved.
- (2) Supervision of enforcing measures referred to in paragraph 1 of this Article shall be performed by an independent body for protection of personal data.

CHAPTER XI

SUPEVISION

Supervision of Application of the Law

Article 129

The supervision of implementation of this Law, other regulations and acts adopted based on this Law, international agreements and conventions signed by Montenegro, shall be conducted by Ministry in charge of electronic communications and the Agency, within the scope of its competences defined by this Law.

Supervision of Agency's Activities

Article 130

- (1) Supervision of legality and purposefulness of the Agency's activities shall be conducted by the Ministry according to this Law.
- (2) Supervision referred to in paragraph 1 of this Article, shall not be applied to such activities by the Agency that concern its regulatory function and regulatory rules.

Inspection Supervision

Article 131

Inspection supervision activities from the Article 129 of this Law shall be performed by the Inspector for Electronic Communications of the Ministry in accordance with this Law and Law on Inspection Supervision.

Competences and Authority of the Inspector

Article 132

In addition to authorization determined by the Law on Inspection Supervision, the inspector shall be responsible and authorized to:

- 1) temporarily prohibit provision of electronic communications services, if these are provided without due registration and approval by the Agency and specify measures for preventing further unlawful performance of activities,
- 2) prohibit operation of a radio station which use radio frequencies with no due approval and if necessary, specify measures to prevent its operation – by means of sealing or temporary confiscation of the equipment or parts thereof, for which a certificate on confiscation shall be issued in writing,
- 3) restrict or prohibit operation of an electrical device that, contrary to regulations, causes electromagnetic interference, and impedes operation of electronic communications networks or equipment,
- 4) in cooperation with Market Inspection and Internal Affairs bodies, prohibit and disable sale or exploitation of electronic communication or terminal equipment which is produced or imported to local market, if such equipment does not meet the technical and exploitation and other terms of use prescribed by the Law,
- 5) control coordination of systems of electronic communication operation, according to a Government's regulation, in the state of emergency.

Expert Supervision

Article 133

- (1) Supervision over activities of operators registered with the Agency shall be performed by the Agency through a supervisor for electronic communications.
- (2) Supervisors for Electronic Communications shall perform the activities of supervision independently, as specified in the procedure defined by the Law on Inspection Supervision and this Law.
- (3) Supervisors of electronic communications shall fulfil the terms prescribed by the law.

Responsibilities and Authorizations of a Supervisor

Article 134

- (1) In the procedure of expert supervision, the supervisors for electronic communications shall:
 - 1) control the fulfilment of conditions for use of frequencies and numeration based on the approvals issued;
 - 2) control the conformity of operation parameters with specified norms and standards: RR systems, broadcasting transmitters, television transmitters, repeater stations, fixed and mobile radio stations, base stations for mobile telephony and stations of radio networks for wireless access, optical and wire transmission systems, cable distribution systems, exchanges for fixed and mobile telephony, local subscriber networks, subscriber equipment, terminal and other equipment;

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- 3) determine the origin and location and identify a source of obstructing emissions and interferences in radio frequency spectrum;
 - 4) work on timely identification of radio stations which use frequencies without approvals against the law;
 - 5) examine the conformity of working parameters of emission units with specified norms, for purposes of identifying their impact on the environment;
 - 6) determine the conformity with regard to specified norms for quality of service, in providing Universal Service, and declared parameters of quality of other types of services;
 - 7) determine the safety of networks and services of electronic communications, and compliance with provisions of the Law, concerning confidentiality and secrecy of communications;
 - 8) control the validity of tariff bodies and regularity of application of approved, and publicly declared tariffs;
 - 9) control applied measures of protection of devices and equipment;
 - 10) control technical and other documentation (records on condition of systems, licenses, permits, approvals, attests, etc.).
- (2) Supervisor for electronic communications shall be authorized to:
- 1) issue an order to operators, providers of services, or the owner of electronic communications equipment, to enable access to company premises and access to equipment, for reasons of expert examination, and to make available the necessary information, technical and other documentation, and for the inspector to execute, if necessary, particular testing and measuring on their equipment in accordance with technical resources available;
 - 2) undertake appropriate measures, and order an operator to eliminate deficiencies within a reasonable deadline, if in the course of exploitation of electronic communications networks or provision of electronic communications services, this Law is applied incorrectly, or the regulation adopted on the basis of this Law and acts adopted by the Agency and regulation and standards in force;
 - 3) order to an operator to eliminate deficiencies in operation of a radio station that is not functioning in accordance with the Law, or temporarily ban putting it into operation if interferences produced are significant and obstruct proper operation of other electronic communications equipment;
 - 4) in case of need, issue order to control-measurement centres in order to monitor and establish sources of interference and to obtain measuring data, necessary for performing expert supervision;
 - 5) in cases of severe violations of the Law, when it is established that an entity is performing activities without due registration or approval from the Agency, inform the inspector for electronic communications in due time.
- (3) Authorized persons of the Agency may at the operator's immediately perform control and collection of data necessary for fulfilment of activities under the competence of the Agency.
- (4) Persons from paragraph 3 of this Article shall be obliged to maintain secrecy of all information on operator's activity, obtained during their work (such as business secrets, personal data, secret data etc.)

Proving Capacity of a Supervision Body

Article 135

Inspectors and supervisors of electronic communications, in the course of inspection or expert examinations, shall prove capacity of a supervision body by means of an identity document issued by the Ministry.

Legal Remedies

Article 136

Complaint against decisions issued in the procedure of inspection supervision, or in the procedure of expert supervision, is allowed to be submitted to the Ministry within 8 days from the day the decision was presented to the subject of supervision. Complaint against a decision shall not suspend execution of the decision.

CHAPTER XII

PENALTY PROVISIONS

Offences

Article 137

(1) Any legal person shall be punished with a fine amounting to not less than 10 and no more than 300 (three hundred) minimal salaries in Montenegro for an offence if:

1. they do not submit data to the Agency (article 18 paragraph 1);
2. they do not submit request to the Agency prior to commencement of changes in or termination of providing public communications networks or providing public communications services (paragraph 2, Article 31);
3. electronic communications networks or electronic communications are not provided within a legally separated company or separate accounting is not kept for activities in relation to provision of public electronic communications networks or provision of services (paragraph 2, Article 35);
4. broadcast of a particular program imposed by the Agency is not provided (Article 38);
5. obligation with regard to publishing of Reference Offer for providing interconnection or operator access is not fulfilled within 90 days from the day of issuing the decision (Article 44 paragraph 2);
6. obligations with regard to provision of essentially equal conditions and quality when providing interconnection or operator access to all operators providing essentially equal services, including the operators being a part of its company or related company are not fulfilled (Article 45 paragraph 2);
7. obligations with regard to providing transparency of its wholesale or internal accounting prices are not fulfilled (Article 46 paragraph 2);
8. obligations with regard to enabling operator access to specific network elements and accompanying infrastructure, including access network and usage thereof are not fulfilled (Article 47 paragraph 2);
9. the operator with significant market power, due to lack of efficient competition or for the purpose of its prevention, maintains excessively high prices or excessively low difference between retail and wholesale prices, not proving cost orientation of prices added an acceptable income rate on investments (Article 48, paragraph 2 and 4);
10. obligations with regard to provision of access to all other operators' publicly available phone services and cost based prices for operator access and interconnection related to carrier selection and pre selection are not fulfilled (Article 49, paragraphs 1 and 3);
11. obligations with regard to regulation of retail services are not fulfilled (Article 50 paragraph 1);

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12. obligations with regard to provision of a complete minimum set of leased lines or only a part thereof are not fulfilled (Article 51 paragraph 2);
 13. obligations with regard to provision of universal service on the territory of Montenegro are not fulfilled (Article 54, paragraph 1);
 14. radio frequencies are used without a valid Approval (paragraph 1, Article 65);
 15. numbers are used without a valid Approval (Article 89);
 16. they do not provide appropriate equipment and adequate interfaces at their own expense (article 125 paragraph 1);
 17. upon an instruction received, lawful interception of communications is not initiated, or lawful interception is not performed in a way, to the extent and in duration specified in the instruction (paragraph 2, Article 125);
 18. permanent registry of interception is not provided and data are not retained (paragraph 3, Article 125);
 19. they do not retain data categories, required for: detection and identification of the source of a particular communication at fixed and mobile telephone networks; identification of destination of a particular communication at fixed and mobile telephone networks; identification of date, time and duration of a particular communication at fixed and mobile telephone networks; identification of the type of communication at fixed and mobile networks; identification of the user's communications equipment or determination of the purpose of such equipment at fixed and mobile telephone networks and identification of a location at mobile communications equipment (article 127 paragraph 1, items 1, 2, 3, 4, 5 and 6).
- (2) Responsible employee of a legal person shall be fined for an offence from the paragraph 1 of this Article the amount not less than 1/2 and not more than 20 minimal salaries in Montenegro.
- (3) Natural person shall be fined for an offence from the paragraph 1 of this Article the amount not less than 3 and not more than 10 minimal salaries in Montenegro.

Article 138

- (1) Legal person shall be fined the amount of not less than 10 and not more than 250 minimal salaries in Montenegro if:
- 1) they do not negotiate on the joint use of electronic communications infrastructure or not respond to request within 15 days from the day of submission thereof (paragraph 2, Article 33);
 - 2) they do not submit updated information on their capacities in the interest of joint use of infrastructure upon request of the Agency, at least once in three months (paragraph 4, Article 33);
 - 3) they do not negotiate on operator access and interconnection of their networks, not publish updated information in the interest of conduction of negotiations or not timely respond to the request for interconnection or operator access (paragraph 1 and 2, Article 34);
 - 4) they do not protect the confidentiality of all data exchanged when concluding a contract (paragraph 4, Article 34);
 - 5) access to the interface of an application program or electronic program guide is not provided, or the aforementioned is not provided under just, reasonable and non-discriminatory conditions (paragraph 3, Article 36);
 - 6) specified requirements with regard to operation of digital radio and television user equipment are not met (paragraph 4, Article 36);

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- 7) their systems with conditional access to services of digital television or radio do not provide to a public communications network operator the full control over providing services (paragraph 1, Article 37);
- 8) technical services are not provided under reasonable and non-discriminatory conditions (paragraph 2, Article 37);
- 9) separate accounting is not kept for systems with conditional access (paragraph 3, Article 37);
- 10) data from the Universal Directory or data provided by the Universal Directory enquiry are not regularly updated (paragraph 3, Article 53);
- 11) they do not provide access to information from the joint database in the extent that corresponds to the needs of the Universal Directory operator (Article 53 paragraph 4);
- 12) prices of services, provided within the Universal Service, are not equal on the whole territory of Montenegro (paragraph 2, Article 55);
- 13) they do not offer special tariffs or special packages for users with low income or persons with disabilities, which are different from those provided for the same purposes under commercial conditions (paragraph 4 Article 55);
- 14) apart from general obligations related to rights of users, they don't define unbundling of a price and general services providing conditions or provide subscribers with one or more possibilities to control their spending (items 1 and 2, paragraph 6, Article 55);
- 15) contribution is not paid to the Universal Service provider within the time frame and in the amount specified by the Agency's decision (paragraph 3, Article 58);
- 16) the Agency is not informed on revenues from provision of public communications networks or performing public communications services within the time frame specified in this Law (paragraph 4, Article 58);
- 17) they obstruct the Agency while inspecting the information and evaluating revenues (paragraph 5, Article 58 and paragraph 6, Article 32);
- 18) they don't designate by means of a Decision the employees who are obligated to enable uninterrupted provision of Universal Service during a strike (Article 59);
- 19) plan of measures for providing services in emergency situations is not prepared, or such measures are not implemented during the total duration of circumstances for which these were prepared, unless so is not possible due to greater force (paragraph 1, Article 60);
- 20) uninterrupted access to emergency numbers and using thereof in extraordinary circumstances is not provided (paragraph 3, Article 60);
- 21) in cases of network failure, war or state of emergency and natural or other disasters, the function of advantage is not performed or adjustment in accordance to the request by the competent body is not carried out (paragraph 2, Article 60 and paragraph 1, Article 61);
- 22) access points for function of advantage are used contrary to the Government decision (Article 61, paragraph 2);
- 23) the right to use radio-frequencies is transferred without prior consent from the Agency (Article 79);
- 24) the right to use numbers is transferred without prior consent from the Agency (Article 94);
- 25) prices of interconnection in porting numbers are not cost oriented (paragraph 3, Article 98);
- 26) free of charge dialling of emergency numbers or appropriate line identification are not provided to subscribers (paragraph 1, Article 100);

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- 27) transparent information on valid prices and tariffs and general terms and conditions of access and use of public communications services is not published according to the regulations (Article 102, paragraph 2);
 - 28) subscriber contract is not prepared in accordance with the Agency's act (Article 104, paragraph 2);
 - 29) don't provide the number portability to subscribers when changing operator or service provider (paragraph 4, Article 110);
 - 30) they don't carry out technical and organizational measures in a way that provides security for their own network and services (paragraph 1, Article 112);
 - 31) subscribers and the Agency are not warned in due time if there is a possibility of the influence on communication safety (paragraph 2, Article 112);
 - 32) access to their services is restricted or subscriber is disconnected and subscriber agreement terminated or other measures are taken for reasons not specified in contract or general terms and conditions or the measures are discriminatory or not proportionate to the breach (paragraph 1, Article 115);
 - 33) subscriber is not warned in reliable manner about the breach of obligation from subscriber contract (paragraph 2, Article 115);
 - 34) they take actions before the final decision of the Agency, although subscriber has submitted a complaint on the amount of customer bill (Article 115, paragraph 4);
 - 35) subscriber is deprived of services which are not a subject of dispute before the Agency's final decision if this is possible, or the access and use of Unique European Number for Emergency calls "112" are limited (Article 115, paragraph 5);
 - 36) users and the Agency are not informed (Article 116 paragraph 1);
 - 37) they don't inform a subscriber in a clear manner on the purpose of data processing and at the same time does not offer an option for such processing to be refused or compliance to be expressed (paragraph 3 Article 119);
 - 38) electronic communications confidentiality is not protected (Article 119, paragraph 4);
 - 39) user data are used out of allowed range (Article 120, paragraph 4);
 - 40) traffic data are not deleted or made impersonal upon termination of a connection (paragraph 1, Article 121);
 - 41) prior consent from a subscriber or user is not obtained (paragraph 3, Article 121);
 - 42) location data are not processed in a prescribed manner (Article 123, paragraph 1);
 - 43) the right of a user or subscriber to temporary denial of processing data is breached (paragraph 2, Article 123);
 - 44) traffic data are processed by non authorized persons (paragraph 3, Article 123);
 - 45) electronic mail address of a buyer is used for direct sale, although the buyer refused such direct sale (paragraph 1, Article 124);
 - 46) electronic communications are used for direct sale without prior consent from the subscriber (paragraph 3 Article 124);
 - 47) during direct sale by using electronic communications false identity or fake address is used (paragraph 4, Article 124);
 - 48) prescribed procedures for data retention are not carried out (paragraph 4, Article 126).
- (2) Responsible employee of a legal person shall be punished for an offence from the paragraph 1 of this Article with a fine amounting to not less than ½ and not more than 15 minimal salaries in Montenegro.

- (3). Natural person shall be fined for an offence from paragraph 1 of this Article, the amount of not less than 3 and not more than 8 minimal salaries in Montenegro.

Article 139

- (1) Legal person shall be fined for an offence the amount of not less than 10 and not more than 200 minimal salaries in Montenegro if:
- 1) electronic communications networks and terminal equipment for connection to public communications network do not fulfil prescribed technical conditions (Article 25, paragraph 1);
 - 2) electronic communications networks for broadcasting services of digital television are not planned in such a way that they can be used for broadcasting wide-screen services and television programs (paragraph 1, Article 36);
 - 3) format for distributing TV digital programs to TV wide-screen receivers is not preserved (paragraph 2, Article 36);
 - 4) they do not use radio frequencies in accordance with the Decision on assignment of radio-frequencies (Articles 65 paragraph 1);
 - 5) they do not use numbers or series of numbers from Numeration Plan or Addressing Plan in accordance with the Decision on assignment of numbers or series of numbers (Article 89);
 - 6) subscribers from other countries are not enabled to dial non-geographic numbers, if so is technically feasible and commercially viable (Article 101);
 - 7) subscriber agreement does not contain all the required elements (paragraphs 2 and 3, Article 104);
 - 8) Subscribers are not informed on the change of terms defined by subscriber agreement at least 30 days before the changes occurred (paragraph 5, Article 104);
 - 9) subscribers are not provided with the prohibition on entering their data in the Directory, upon their request (paragraph 1, Article 111);
 - 10) subscribers are not informed free of charge on the purpose and further use of printed or electronic subscriber directory, which contains their personal information (paragraph 2, Article 111);
 - 11) entrance into Directory or free of charge personal information checking and deleting and informing on that possibility is rejected (paragraph 1 and 2, Article 111);
 - 12) correct charging of the services based on itemized bill is not performed and users' insight in those data, i.e. issuing bill free of charge is not enabled (paragraph 1, Article 113);
 - 13) upon submitting every bill, basic level of bill itemization is not offered free of charge to subscribers or bill does not contain all necessary data (paragraph 2 and 3, Article 113);
 - 14) higher level of bill itemization is not announced in General Terms and Conditions or higher price for higher level of bill itemization is calculated comparing to real costs (paragraph 5, Article 113);
 - 15) they provide use of collected user data contrary to prescribed conditions (paragraph 4, Article 121);
 - 16) prohibition of calling line identification is not provided although it was prescribed (article 122);
 - 17) prior to their consent, user or subscriber is not informed on a type of location data which will be processed, as well as on the purpose and duration of processing and the possibility of transmission to third parties (paragraph 1, Article 123);

18) subscriber or user is not offered an option to deny temporarily at any time, in a simple manner and free of charge, processing of location data, which are not traffic data, upon each connection to communications network or each traffic transfer (paragraph 2, Article 123);

19) automated voice systems, facsimile devices or electronic mail are used for direct marketing without prior consent from the subscriber (paragraph 1, Article 124).

(2) Responsible person employed by the legal person shall also be fined for an offence from the paragraph 1 of this Article with not less than $\frac{1}{2}$ and not more than 10 minimal salaries in Montenegro.

(3) Natural person shall be fined for an offence from the paragraph 1 of the Article not less than 3 and not more than 6 minimal salaries in Montenegro.

Article 140

Legal entity shall be fined the amount of not less than 10 and not more than 150 minimal salaries in Montenegro if:

1) costs of displacement, change or extension of objects and means are not covered (paragraph 2, Article 29);

2) the Agency is not informed about the changes of information within the specified time limit (paragraph 7, Article 31);

3) they do not provide registering in the Universal Directory for users or put at disposal the data from joint base for Universal Directory purposes and if access to Universal directory enquiry service in other countries is not provided (paragraphs 1, 2, 3 and 4, Article 53);

4) information on the quality of services are not submitted to the Agency on regular basis i.e. at least once a year updated data on the quality of services are not published (paragraph 2, Article 56);

5) radio-frequencies are used without a decision on approval for radio-frequencies (paragraph 1, Article 65);

6) they do not act in accordance with the approval on use of radio frequencies or terms of their usage or do not use the frequencies which do not need approval in an appropriate manner (paragraph 2, Article 65 and Article 75 and 76);

7) the Agency has not been informed in due time on the change of data of a holder of Approval (paragraph 3, Article 75 and paragraph 2, Article 91);

8) radio or telecommunications terminal equipment is connected to public communications network in a way contrary to the Law and other regulations (paragraph 1, Article 85);

9) they don't provide free identification of incoming calls and location of calls to emergency services, although that is technically possible (paragraph 2, Article 100);

10) users request for connection of radio or telecommunication terminal equipment is not met although it meets the requirements (paragraph 1, Article 105);

11) appropriate and updated information on the quality of services are not published or submitted to the Agency (paragraph 3, Article 106);

12) in providing electronic communications service, which enables diverting calls, subscribers are not enabled to prevent automatic call diverting by third persons to their terminal for an individual call or connection, free of charge and by using simple means (Article 108).

(2) Responsible employee of a legal person shall be fined for an offence from the paragraph 1 of this Article the amount of not less than $\frac{1}{2}$ and not more than 10 minimal salaries in Montenegro.

(3) Natural person shall be fined for an offence from the paragraph 1 of this Article the amount of not less than 3 and not more than 5 minimal salaries in Montenegro.

CHAPTER XIII
TRANSITIONAL AND FINAL PROVISIONS

Licenses

Article 141

- (1) Valid Licenses issued by the Agency for Telecommunications and Postal Services and the Broadcasting Agency shall be made compliant with provisions of this Law within nine months from the day of entry into force of this Law.
- (2) Valid licenses issued by the Agency for Telecommunications and Postal Services shall be made compliant with provisions of the Article 125 of this Law within six months from the day of entry into force of this Law.
- (3) Licenses for procurement and installation of radio stations, licenses for work of radio stations and temporary licenses for radio stations according to the Law on Telecommunications and the Law on Broadcasting shall be valid until the expiration of the period for which they were issued.
- (4) Existing operators, performing activities on the basis of licenses issued by the Agency for Telecommunications and Postal Services and Broadcasting Agency, shall continue to perform activities in compliance with those Acts until issuance of approvals and other Acts in accordance with this Law.
- (5) Holders of licenses issued by the Agency for Telecommunications and Postal Services shall be entered into the registry of operators and shall be issued approvals for use of limited resources, in conformity with existing licenses.
- (6) Holders of licenses issued by the Broadcasting Agency shall be entered into the registry of operators and shall be issued approvals for use of frequencies, in conformity with existing licenses.
- (7) Procedures initiated in accordance with the Law on Telecommunications shall be concluded in accordance with that Law.

Commencement of Activities of the Agency

Article 142

- (1) Agency for Telecommunications and Postal Services shall continue its work as the Agency for Electronic Communications and Postal Services.
- (2) The Government shall appoint the President and members of the Council of the Agency within 60 days from the day of entry into force of this Law.
- (3) Council shall appoint the Director of the Agency within 30 days from the day of constitution of the Council.
- (4) Council for ECP shall adopt the Statute of the Agency within 30 days from the day of appointment of the President and members of the Council.
- (5) Agency for Electronic Communication and Postal Services shall take over a part of the assets, associated software of the Broadcasting Agency and employees employed in conducting activities that come out of the Agency's authority within 90 days from the day of entry into force of this Law.

Operators with Significant Market Power

Article 143

1. The Agency shall conduct a market analysis and identify operators with significant market power during the course of one year from the day of entry into force of this Law.
2. Until the identification of operators according to the analysis referred to in paragraph 1 of this Article, it shall be considered that:
 - 1) Montenegrin Telecom is an operator with significant market power in the markets of fixed voice telephone network and services, including the market of access to network for data transfer and leased lines;

- 2) All telephone network operators are operators with significant market power in markets of termination of calls in their respective networks;
- 3) Broadcasting Centre is an operator with significant market power in the market of distribution services and emission of broadcasting signals.

Universal Service Implementation

Article 144

The Agency shall adopt acts referred to in Article 8 of this Law and initiate tender procedure for selection of operator of Universal Service no later than 6 months from the day of entry into force of this Law.

Minimum Set of Leased Lines

Article 145

The Ministry shall adopt a bylaw in accordance with the Article 51 of this Law within 6 months from the day of entry into force of this Law.

Other activities in application of provisions of this Law

Article 146

- (1) Unless otherwise determined in this Law, operators, the Agency and the Ministry shall conduct technical modifications or conduct activities that shall enable the application of Articles of this Law within 12 months from the day of entry into force of this Law.
- (2) The operators shall submit within 12 months all necessary data to the responsible bodies according to this Law.

Fees

Article 147

Annual regulatory fees determined in accordance with the Law on Telecommunications and Broadcasting Law shall be charged in the amount calculated beforehand, until **31 December 2008** or to the end of accounting period for which the fee was paid in advance.

Adoption of Regulations

Article 148

- (1) The Ministry shall adopt regulation on obligatory payment of fees in the amount corresponding to actual costs according to Articles 84 and 97 of this Law within 6 months from the day of entry into force of this Law.
- (2) The Ministry shall adopt the other regulations according to this Law within one year from the day of entry into force of this Law.
- (3) The Agency shall adopt regulations according to this Law within six months from the day of entry into force of this Law.
- (4) Until the day the regulations adopted based on this Law enter into force, regulations adopted based on the Law on Telecommunications and Broadcasting Law shall be applied, unless they are contrary to this Law.

Cessation of Validity

Article 149

The day this Law enters into force, the Law on Telecommunications (Official Gazette of the Republic of Montenegro, 59/00) shall cease to be valid, as well as the provisions of the Article 2 paragraph 1, items 2, 5 and 9; Article 3 paragraph 1 items 4, 5 and 7; Article 4 paragraph 1, indents 2 - 14, 16 and 20 - 34; Article 6 paragraph 1 indent 2; Article 7 paragraph 1, items 1, 2, 4, 6, 7, 9, 15 and paragraph 2; Article 8 paragraph 1; Article 21 paragraph 1 items 1, 2, 5, 6, 7 and 8,

38. LAW ON ELECTRONIC COMMUNICATIONS

Article 26 paragraph 1 item 4, Article 28 paragraph 1 items 2, 3 and 4; Articles 31, 32, 36 - 46, Article 53 paragraph 2 items 1 and 2 and item 3 in the part related to emission technology, Articles 60, 61, 62, 63, 64, 66, 67, 68, 69, 71, 72, 73, chapter 6 Business Organization for Transmission and Emission of Broadcasting Signals, Articles 80-85, Articles 89, 90, 91, 115, 116, 119 and 130 of the Law on Broadcasting (Official Gazette of the Republic of Montenegro 15/02, 62/02 and 56/04).

Entry into Force

Article 150

(1) This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.