Based on Article 95, paragraph 3 of the Constitution of Montenegro, I am passing the

Decree
on proclamation of the Law on Amendments to the Law on Electronic Communications


I hereby declare the Law on Amendments to the Law on Electronic Communications, which was passed by the Parliament of Montenegro in its 26th Convocation at its 4th session of the second Ordinary (Autumn) Sitting in 2016 held on 29th December 2016.

No: 01-1318/2
Podgorica, 30th December 2016
President of Montenegro
Filip Vujanović, s.r.

Pursuant to Article 82, paragraph 1, item 2 of the Constitution of Montenegro, and pursuant to Amendment IV, paragraph 1, item 2 to the Constitution of Montenegro, the Parliament of Montenegro in its 26th Convocation at its 4th session of the 2nd Ordinary (Autumn) Sitting in 2016 held on 29th December 2016, passed the

Law on Amendments to the Law on Electronic Communications

Article 1
In item 5 of Article 3 (1), of the Law on Electronic Communications (“Official Gazette of the Republic of Montenegro” No. 40/13), ”the persons with reduced mobility”, and ”the elderly” are (hereby) deleted.

Article 2
In Article 19 paragraph (4) shall be deleted.
Present paragraphs 5 and 6 become paragraphs 4 and 5.

Article 3
Article 27 is amended as follows:
“If the Annual Report on revenues and expenses indicates that the total revenues generated by the Agency exceed the total expenses, the excess revenue shall be allocated to the separate account, and shall be used only for the purpose of being compliant with the provisions of the Law concerning the activities of the Agency in the next calendar year.”.

Article 4
In Article 32(2), “general” is (hereby) deleted.
Paragraph 3 is reworded as follows:
“(3) The Council shall decide on rights and protection of users’ interests within 30 days from the day of application.”.
Paragraph 5 is reworded as follows:
“(5) An administrative procedure may be initiated against the Decision brought by the Agency.”.
Paragraph 6 shall be deleted.

Article 5
In Article 39(2), item (2), “with persons of reduced mobility” shall be deleted.
After paragraph 3 a new paragraph shall be added, worded as follows:
“(4) Operator or the owner of the electronic communications network, electronic communications infrastructure and associated facilities, shall at least 15 days prior to the inception of works, submit to the Agency a written notice, specifying the exact date of the inception of works, location of construction, technical specifications of the network effective in Montenegro, infrastructure and associated facilities, including their elements.”.

Present paragraphs 4 and 5 shall become paragraphs 5 and 6.

**Article 6**

In Article 52(2), the following is (hereby) deleted: “generated from the activities of electronic communications, and”.

After paragraph 2, two new paragraphs shall be added, worded as follows:

(3) If the operator performs other activities, it shall keep accounting of the funds for each activity separately, specifying each revenue generated from the activities of electronic communications and/or electronic communications infrastructure and associated facilities given for use or from the provision of publicly available electronic communications services.

(4) If the operator does not keep separate accounting of the funds, referred to in paragraph 3 of the Article hereof, the Agency shall take the total revenue of the operator generated in the previous business year as the base for calculation of the annual fee for expenses of market regulation and supervision in the area of electronic communications referred to in Article 51 paragraph 1 of this Law, based on the data operator submitted to administration authority in charge of public revenue.”.

In paragraph 3, “referred to in paragraph 1 and 2” is replaced by “referred to in paragraphs 1, 2 and 3”.

In paragraph 4, “referred to in paragraph 3” is replaced by: “referred to in paragraph 5”.

Present paragraphs 3 and 4 shall become paragraphs 5 and 6.

**Article 7**

In Article 53, paragraph (5) shall be deleted.

**Article 8**

In Article 58, paragraph (2) shall be deleted.

Present paragraphs 3, 4, 5 and 6 shall become respectively 2, 3, 4 and 5.

**Article 9**

Paragraph 3 of Article 61 shall be replaced by the following:

“(3) Operator shall submit the emergency plan referred to in paragraph 1 of the Article
hereof to the Ministry, Agency, bodies in charge of defense and security, protection and rescue and to the state body in charge of the inspection, within three days from the day of its development.”.

Article 10
In Article 64(2), item (3), “referred to in Article 68” is replaced by “referred to in Article 69”.

Article 11
In Article 69(3), “Articles 70-75” is replaced by “Articles 71-78”.

Article 12
In Article 77(3), “of the Article 76” shall be replaced by the following: “of the Article 69”.

Article 13
After Article 78 a new Article shall be added, worded as follows:
“Regulation of roaming charges”
Article 78a
(1) The Agency may, without previous market research, determine maximum roaming charges to the operator of the public electronic communications services in accordance with the agreement on reducing the charges of roaming services in the public mobile communications networks, which Montenegro signs with other countries.
(2) The maximum tariffs for the service referred to in paragraph 1 of the Article hereof, shall be determined by the regulation of the Agency.”.

Article 14

Nespa computers doo, Podgorica
In item (4) of Article 82(1), “the persons with reduced mobility and” shall be deleted. In paragraph 2, the full stop at the end of the text shall be deleted, and the following shall be added: “provided the opinion of the administrative body and/or of the organization in charge of the control over the assistance of the state.”.

Article 15
The following shall be substituted for Article 86(4):
“(4) In the event that the designation of the Universal Service operator fails in the public tender procedure, the Agency shall make an assessment of the market of publicly available electronic communications services in fixed locations and, by means of a Decision, the Agency shall designate the operator with the most significant market power to be the Universal Service operator, applying the principles of efficiency, objectivity and transparency.”.
In paragraph 6, the full stop at the end of the text shall be deleted and the following shall be added: “provided the opinion of the administrative body and/or of the organization in charge of control over the assistance of the state.”.

Article 16
In Article 89(2) and in Article 89(4), after the words “socially vulnerable persons”, the comma and the words “persons with reduced mobility” shall be deleted.

Article 17
In Article 90(1), after the words “socially vulnerable persons”, the comma and the words “persons with reduced mobility” shall be deleted.

Article 18
Article 92(1) shall be replaced by the following:
“(1) The Universal Service operator shall be entitled to compensation of net costs for the Universal Service provision, if the provision of the Universal Service represents an unreasonable financial burden to the operator.”.
In paragraph 3 the full stop at the end of the text shall be deleted and the following shall be added thereto: “provided the opinion of the administrative body, and/or of the organization in charge of control over the assistance of the state.”.

Article 19
Title of Article 93 and paragraph 1 are (hereby) replaced respectively:
“Keeping separate accounting”
“(1) The Universal Service operator shall record and keep the revenues generated from
and the costs incurred by the provision of services of the Universal Service separately from the revenues generated from and the costs incurred by the provision of other services.”.

**Article 20**

In Article 94 paragraphs 1 and 2 are replaced by the following:

“(1) Accounting records of the Universal Service operator referred to in Article 93 of this Law, the Agency shall use as a data base for calculation of net costs.

(2) If the Universal Service operator was selected in a public tender, in the calculation of net costs, the Agency shall also take into account the offer which the operator specified in its bid.”.

In paragraph 3, “excessive costs” is replaced by “unreasonable financial burden”.

After paragraph 3, a new paragraph shall be added, worded as follows:

“(4) Calculation of net costs, which is the base for compensation of net costs of Universal services, shall be determined in accordance with the regulations on the assistance of the State.”.

Present paragraphs 4 and 5 become paragraphs 5 and 6.

**Article 21**

In Article 95 (2), after the words “total annual revenue”, the words “of the operator referred to in paragraph 1 of the Article hereof” shall be inserted.

**Article 22**

In Article 100 (2), Article 106(2) and Article 117(3), “use” is replaced by “implementation”.

**Article 23**

In Article 102, paragraph 2 shall be deleted.
Present paragraph 3 becomes paragraph 2.

**Article 24**

In Article 114, paragraph 3 shall be deleted.

**Article 25**

In Article 123, paragraph 1 and paragraph 3(1), ”agreements” is replaced by “technical regulations and standards”.

Paragraph 3(3) shall be replaced by the following:

“3) perform adequate measurements of the parameters of radio emissions with a purpose to control compliance with the terms of use of radio-frequencies from the appropriate approval.”

**Article 26**

In Article 147(1), ”and the law regulating consumer Protection” shall be deleted.

**Article 27**

In Article 151 paragraph 2(5), ”a half” is replaced by “70%”.

In paragraph 2(13), the comma and the words “with the approval of the user and” shall be deleted.

**Article 28**

In Article 152(2), the full stop at the end of the text shall be deleted and the following shall be added thereto: ”and subscriber agreements concluded for an indefinite period of time, without minimum term.”.

In paragraph 4, “products” is replaced by “equipment, facilities”.

**Article 29**

In Article 153, after paragraph 3, the following (new) paragraph shall be inserted:

“(4) The operator shall not conclude with the user any subscriber agreement which has not been provided with the previous consent referred to in paragraph 3 of the Article hereof.”

Present paragraphs 4, 5 and 6 become respectively paragraphs 5, 6 and 7.

**Article 30**

In Article 155(1), the full stop at the end of the text shall be deleted and the following shall be added thereto: “stipulated in Subscriber Agreement and in the Act of the Agency referred to in paragraph 3 of the Article hereof.”

Paragraph 2 is amended as follows:

“(2) Parameters for establishing the quality, methods of their measuring and publishing by
the Agency and the operator, and the deadlines for submission of the measurements done by the operator, shall be prescribed by the Agency.”.
In paragraph 3, “may prescribe” is replaced by “shall prescribe”.

**Article 31**
In Article 159 (7), the full stop at the end of the text shall be deleted and the following shall be added thereto: “and in accordance with the prices determined in the published price list of the services.”.

**Article 32**
In Article 161, paragraph 5 shall be deleted. Present paragraph 6 becomes paragraph 5.

**Article 33**
In Article 164(3), after the word “subscriber”, the words: “who, by its terminal equipment interferes with the operation of electronic communications networks and with the subscriber” shall be inserted.

**Article 34**
In Article 165 (1) and (2), “final” shall be deleted. In paragraph 3, “final” shall be deleted.
Article 35
In Article 169(1), “Article 168 paragraph 1 and 4” shall be replaced by “Article 168 paragraph 1”.
In paragraph 5 and 6, “Article 168 paragraph 3 and 4” shall be replaced by “Article 168 paragraph 1”.

Article 36
In Article 187 paragraph 1(7), the full stop at the end of the text shall be deleted, and the following shall be added thereto: “referred to in Article 61 paragraph 6 and Article 62 paragraph 2 of this Law”.

Article 37
In Article 189(1), after item 1, a new item shall be added, worded as follows:
“1a) control the fulfillment of obligations of the operator in the emergency situations.”.

In item 9, “control works” is replaced by “control if the works”; in the same item, “that are not” shall be deleted.

Article 38
In Article 192 paragraph 1(3) shall be replaced by the following:
“3) fails to submit the emergency plan referred to in Article 61 paragraph 1 of this Law, to the Ministry, Agency, bodies in charge of defense and security, protection and rescuing, and inspection, within three days from the date of its development (Article 61 paragraph 3);”.

Article 39
In introductory sentence of Article 193(1) of of this Law, after the word “fined”, the words “in the amount between” shall be inserted.

After item 12, two new sub items shall be added, worded as follows:
“12a) fails to provide public electronic communications services of adequate service quality defined in the consumer agreement and in the Act of the Agency referred to in Article 155 paragraph 3 of this Law (Article 155 paragraph 1);
“12b) fails to calculate offered services on one basis only and in accordance with the prices published in the price list of the services (Article 159 paragraph 7);”.

Item 13 is replaced by the following:
“13) upon the request of the Agency, fails to restrict the access to its services, and/or disconnect the subscriber and terminate the agreement with the subscriber whose terminal equipment interferes with the operation of electronic communications network, and with the the subscriber who organizes games of chance on the Internet without the approval of the state administration body in charge of games of chance (Article 164 paragraph 3);”.

After item 14 a new item shall be added, worded as follows:
“15) fails to assign a person to be in charge for implementation of the provisions referred to in Article 168 paragraph 1 of this Law (Article 169 paragraph 1).”.

Article 40
After item 1 of Article 194 (1), a new sub-item shall be added, worded as follows:
“1a) fails to submit to the Agency, at least fifteen days prior to the date of beginning of the construction, a written notice of the beginning of construction, location of the construction and the technical characteristics of the planned network, infrastructure and associated facilities or elements thereof (Article 39 paragraph 4);”
In item 2, “Article 39 paragraph 4” is replaced by “Article 39 paragraph 5”.
In items 30 and 31, the comma after “socially vulnerable persons” is deleted; in the same items “persons with reduced mobility” shall be deleted.
After item 54, a new sub-item shall be added, worded as follows:
“54a) concludes subscriber agreement with the user without prior consent referred to in Article 153 paragraph 3 of this Law (Article 153 paragraph 4);”.
In item 55, “Article 153 paragraph 6” is replaced by “Article 153 paragraph 7”.

Article 41
In Article 195(1) item (7) shall be deleted.
In item 8, the comma after “socially vulnerable persons” shall be deleted; in the same item “persons with reduced mobility and” shall be deleted.
In items 27 and 28, “final” shall be deleted.
After item 42, two new sub-items shall be added, worded as follows:

“42a) fails to provide the customer with the opportunity to, in a simple manner and free of charge, object thereto or refuse the use of its electronic contact data for such purposes. (Article 178 paragraph 2);

42b) allows sending of electronic mail for the purposes of advertising or encouraging the recipient to visit the websites where the identity of the sender is misrepresented or concealed or where there is no correct address to which the recipient may send the request to terminate such communication (Article 178 paragraph 3);”.

**Article 42**

Article 206 shall be deleted.

**Article 43**

This Law shall come into force on the eighth day from the date of its publication in the “Official Gazette of Montenegro”.

No: 10-1/16-2/8

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Podgorica, 29th December 2016

Parliament of Montenegro, 26th Convocation

President of the Parliament of Montenegro

Ivan Brajović, s.r.