

-Unofficial translation-

Having regard to the Order of the Minister of Communications and Information Technology no. 225/2003 approving the Policy and strategy paper on the universal service implementation in the postal sector,

On grounds of the provisions of Article 6 paragraph (2) letter d), Article 10 paragraph (2) indents 25 and 26, Article 11 paragraph (1) and Article 12 paragraphs (1) and (3) of Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law no. 113/2010, with the subsequent amendments and completions, as well as of Article 6 paragraphs (2) and (3) and of Article 14 paragraph (1) of Government Ordinance no. 31/2002 on postal services, approved with amendments and completions by Law no. 642/2002, with the subsequent amendments and completions,

**THE PRESIDENT OF THE NATIONAL AUTHORITY FOR MANAGEMENT AND
REGULATION IN COMMUNICATIONS**

issues this:

DECISION

**amending and completing certain regulations on the designation conditions and
procedure, as well as on the designation of the universal service providers in
the postal sector**

Art. I. – The Decision of the president of the National Regulatory Authority for Communications and Information Technology no. 3442/2007 regarding the conditions and procedure for the designation of the universal service providers in the field of postal services, published in the Romanian Official Journal, Part One, no. 893 of 28 December 2007, shall be amended and completed as follows:

1. Article 1 shall be amended and shall read as follows:

“Art. 1. – (1) The present decision regulates the conditions and the procedure for the designation of the postal service providers as universal service providers, as defined by Article 2 letter q) of Government Ordinance no.31/2002 on postal services, approved with amendments and completions by Law no.642/2002, with the subsequent amendments and completions, hereinafter referred to as the *Government Ordinance no.31/2002*, as well as the mechanisms for financing the net cost determined by the provision of services within the scope of universal service.

(2) Within the text of the present decision the relevant definitions under Article 2 of Government Ordinance no.31/2002 and under item 1.1 of Annex 1 to the Decision of the President of the National Regulatory Authority for Communications and Information Technology no.2858/2007 on the general authorisation regime for the provision of postal services, with the subsequent amendments and completions, shall apply.”

2. Under Article 3, a new paragraph, (2¹), shall be inserted after paragraph (2), reading as follows:

“(2¹) – In thoroughly justified cases, ANCOM may decide to extend with maximum one year the period for which the universal service provider was designated.”

3. After Chapter IV, a new chapter shall be inserted, Chapter IV¹ “Mechanism for financing the universal service obligations”, comprising Articles 12¹ to 12⁷, reading as follows:

“CHAPTER IV¹

Mechanism for financing the universal service obligations

“**Art. 12¹.** – (1) Where, on the basis of the universal service provider’s calculation of the net cost of the provision of services within the scope of the universal service, ANCOM finds that the provision of these services represents an unfair burden on the universal service provider, the regulatory authority shall, upon a request from the universal service provider, decide to compensate the net cost determined by the provision of the services for which it was designated.

(2) The net cost of the universal service obligations shall be calculated as the difference between the net cost borne by the universal service provider as a result of the

universal service obligations and the net cost of the same postal service provider, in the case when it would have operated without the universal service obligations.

(3) In calculating the net cost, all relevant elements shall be taken into consideration, including the intangible benefits and the commercial advantages which the postal service provider accrues as a result of its designation as a universal service provider, the existence of a reasonable profit margin and the stimulation of cost efficiency.

(4) The net cost calculation shall be based upon the following:

a) elements of the services within the scope of universal service which can only be provided at a loss or under conditions falling outside normal commercial standards;

b) specific end-users or groups of end-users who, taking into account the cost of providing a certain category of service, the revenue generated and the tariffs charged by the universal service provider, can only be served at a loss or under cost conditions falling outside normal commercial standards.

(5) The universal service provider shall calculate the net cost of the provision of services within the scope of the universal service according to a methodology established by decision of the ANCOM president.

(6) The request referred to in paragraph (1) shall be transmitted on an annual basis, until 1 July of the financial year following the one for which the compensation is requested, alongside the statement on the costs, revenues and capital employed in relation to the provision of services within the scope of universal service, under the conditions set out by ANCOM.

(7) ANCOM shall decide on the compensation of the net cost and, where appropriate, on the sum to be compensated within 45 days from receiving a request under the terms of the present Article.

Art. 12². – (1) The net cost of the provision of services within the scope of universal service may be compensated from:

a) financial resources from the contributions of the postal service providers authorised according to the procedure of general authorisation for the provision of services within the scope of universal service or of services which may be deemed interchangeable to these services;

b) financial resources from the contributions of the postal service users, by means of a tax applied to the postal services these are using.

(2) The universal service fund may be set up by implementing one of the alternatives referred to in paragraph (1), being administered by ANCOM and distinctly highlighted in the Authority's income and expenditure budget.

(3) ANCOM shall decide the modality in which the provisions of paragraph (2) shall be enforced by decision of the ANCOM president, taking account of the amount necessary to finance the universal service.

(4) Where two or several universal service providers shall be designated, the total amount necessary for financing the universal service shall be established on an annual basis by summing up the amounts to be compensated for all the universal service providers, calculated according to the provisions of the present decision.

Art. 12³. – (1) In view of financing the universal service via the mechanism provided in Article 12² paragraph (1) letter a), ANCOM shall require from the postal service providers, authorised according to the procedure of general authorisation for the provision of services within the scope of universal service or of services which may be deemed interchangeable to these services, with a turnover exceeding or equal to the equivalent in lei of 100,000 euros, registered in the year for which the net cost is compensated, a contribution proportionate to the revenues obtained from the provision of services within the scope of universal service or from services which may be deemed interchangeable to these services.

(2) The substitutability of other postal services with the services within the scope of the universal service shall be analysed taking account in particular of the tariffs of these services, as well as of the level of satisfying the users' needs.

(3) The persons who have the obligation to pay the contribution under paragraph (1) are those having the capacity as a postal service provider as of 31 December of the year for which the contribution is owed.

(4) The equivalent in lei of the turnover referred to in paragraph (1) shall be calculated at the average exchange rate of the period when the turnover was achieved, determined on the basis of the monthly average exchange rate communicated by the National Bank of Romania.

(5) In view of determining the amount of the individual contributions, ANCOM shall use the information on the revenues obtained from the "*Statement on the revenues obtained from the provision of electronic communications networks or services or postal services*" submitted by each provider according to the provisions of the Decision of the

president of the National Regulatory Authority for Communications and Information Technology no. 2892/2007 on the procedure of establishing certain financial obligations owed by the providers of electronic communications networks or services and by the providers of postal services to the National Regulatory Authority for Communications and Information Technology.

(6) In the cases where the providers under paragraph (1) do not submit the statement referred to in paragraph (5), their whole turnover shall be considered when determining the amount of the individual contributions.

(7) The amount of the contribution which the universal service provider has the obligation to pay shall be calculated as the positive difference between the value of the contribution incumbent pursuant to paragraph (1) and the value of the sum to be compensated for the same period and calculated according to the present decision. If the value of the sum to be compensated is higher than or at least equal to the amount of the contribution incumbent on the universal service provider pursuant to paragraph (1), the universal service provider shall be excepted from the payment of this contribution and the value of the sum to be compensated shall be reduced with the value of the contribution owed by the universal service provider.

Art. 12⁴. – (1) The amount of the individual contributions owed by the providers referred to in Article 12² paragraph (1) letter a) shall be set by decision of the ANCOM president within 90 days from determining the net cost of the provision of services within the scope of universal service.

(2) The contribution shall be paid within 45 days from the communication of the decision referred to in paragraph (1).

Art. 12⁵. – In view of financing the universal service by way of the mechanism laid down in Article 12² paragraph (1) letter b), ANCOM shall, by decision of the ANCOM president, set the amount of the tax, as well as the conditions which the universal service providers must observe in order to enforce this tax, within 90 days from determining the net cost of the provision of services within the scope of universal service.

Art. 12⁶. – In order to identify the revenues obtained exclusively from the tax charged pursuant to Article 12⁵, the postal service providers shall highlight distinctly the revenues thus obtained within their statutory financial statements.

Art. 12⁷. – ANCOM shall transfer to the universal service providers the sums collected according to the present Chapter in view of compensating the net cost of the

provision of services within the scope of the universal service for which they were designated, within 15 days from collecting the contributions.”

Article II. The Decision of the president of the National Authority for Management and Regulation in Communications no.293/2009 on the designation of the universal service provider in the field of postal services, published in the Romanian Official Journal, Part One, no. 268 of 24 April 2009, shall be amended and completed as follows:

1. Paragraph (1) of Article 1 shall be amended and shall read as follows:

“Art. 1. – (1) By this decision, the National Company “Romanian Post” - S.A., headquartered in Bucharest, 140 Dacia Boulevard, District 2, registered with the Trade Register Office attached to the Bucharest Law Court, unique registration code 427410, hereinafter referred to as *CNPR*, is designated, until 31 December 2013, as a universal service provider in the field of postal services, in accordance with the definition of this term provided in Article 2 letter q) of the Government Ordinance no.31/2002 on postal services, approved with amendments and completions by Law no.642/2002, with the subsequent amendments and completions, hereinafter referred to as *the Ordinance on postal services*, for the services within the scope of universal service provided in paragraph (2).”

2. Article 2 shall be amended and shall read as follows:

“Art. 2. – For the purpose of this decision, the definitions provided in Article 2 of the Ordinance on postal services and in item 1.1 of Annex no.1 to the Decision of the President of the National Regulatory Authority for Communications and Information Technology no.2858/2007 on the general authorisation regime for the provision of postal services, with the subsequent amendments and completions, shall apply.”

3. Letter f) of Article 4 shall be amended and shall read as follows:

“f) the exclusive right to provide, until 31 December 2012, the reserved services established by ANCOM.”

4. Letter f) of Article 4 shall be followed by a new letter, g), reading as follows:

"g) the right to request the compensation of the net cost of the provision, starting 1 January 2013, of the services within the scope of universal service provided in Article 1 (2)."

5. Article 5 shall be followed by a new article, Article 5¹, reading as follows:

"Art. 5¹ – (1) After the cessation of the exclusive right provided in Article 5, CNPR may request, upon the conclusion of the financial year ended on 31 December 2013, the compensation of the net cost for the provision of services within the scope of universal service provided in Article 1 paragraph (2).

(2) The net cost shall be calculated according to the provisions of the Decision of the National Regulatory Authority for Communications and Information Technology no.3442/2007 on the conditions and procedure for the designation of the universal service providers in the field of postal services, as well as according to the methodology provided in the Annex.

(3) The request to compensate the net cost of the provision of services within the scope of universal service shall be transmitted not later than 1 July of the financial year following that for which the compensation is requested, alongside the statement on the costs, revenues and capital employed in relation to the provision of the services within the scope of universal service, from which should result the net cost value.

(4) The situation provided in paragraph (3) shall be certified by an independent auditor, in a factual findings report, at the expense of the universal service provider, addressed both to the shareholders of the designated provider, and to ANCOM.

(5) The auditor's report mentioned in paragraph (4) shall indicate whether the statement referred to in paragraph (3) reflects, in all material aspects, the information from the accounting documents and relevant financial statements of the universal service provider, as well as whether the procedures for the collection and processing of the accounting information observe the calculation principles and criteria and the separate keeping of costs, revenues and capital employed, established by ANCOM, in accordance with the International Standard on Related Services 4400 of the International Federation of Accountants (IFAC), "*Commitments for conducting the agreed procedures regarding financial data.*"

6. Paragraph (2) of Article 20 shall be amended and shall read as follows:

“(2) For the financial year concluded on 31 December 2012, CNPR has the obligation to conduct, within the system provided in paragraph (1), the separation of activities outside the scope of the universal service from those within the scope of the universal service, as well as the separation of reserved services from the non-reserved ones.”

7. Paragraph (2) of Article 20 shall be followed by a new paragraph, paragraph (2¹), which shall read as follows:

“(2¹) For the financial year concluded on 31 December 2013, CNPR has the obligation to conduct, within the system provided in paragraph (1), the separation of activities outside the scope of universal service from those within the scope of universal service.”

8. In Article 21, paragraph (4) shall be followed by a new paragraph, paragraph (4¹), which shall read as follows:

“(4¹) Regarding the financial year for 2013, CNPR shall conduct and send ANCOM the separate financial statements not later than 1 July 2014, under the conditions for auditing and drawing up the separate accounting statements established by the regulatory authority.”

9. Article 24 shall be followed by a new article, Article 24¹, which shall read as follows:

“**Article 24¹** – The Annex is part of the present decision.”

10. Article 25 shall be followed by an Annex, the content of which is provided in the hereunder included annex.

Art. III. – This decision shall be published in the Romanian Official Journal, Part One, and shall enter into force on the date of publication, excepting the provisions of Article I indent 3 and Article II indent 5, that shall enter into force on 1 January 2013.

**PRESIDENT,
MARIUS CATALIN MARINESCU**

Bucharest, 3 December 2012

No. 975

The method of calculating the net cost of universal service

The net cost of universal service obligations is calculated as a difference between the net cost incurred by Compania Națională „Poșta Română” - S.A., hereinafter CNPR, with universal service obligations (*Base Case Scenario*) and the net cost without universal service obligation (*Counterfactual Scenario*).

The Base Case Scenario reflects the operating conditions and the costs of the universal services which are provided as a universal service obligation.

The Counterfactual Scenario is a simulation of the operating conditions and the costs which would be incurred in case the universal service provider had no obligation of providing the universal service. The counterfactual scenario hypothesis will have to be justified so that it will ensure that this could be applied by the universal service provider and all the assumptions and calculations could be justified in a rational way.

The net cost of universal service shall be calculated by the following formula:

$$NC = Nsz + \sum_{i=1}^n Nppi + \sum_{i=1}^n Ndpi + NPT + NR - TV + profit$$

where:

Nsz – are the costs of specific products provided free of charge, if it is the case. If the USP does not have such an obligation specifically stated in the legislation or, by law or by international agreements, all operators have the obligation to provide certain services free of charge, than ANCOM may decide to eliminate *Nsz*.

Nppi – is the change in profit or loss of **collecting** activities related to the postal items under the universal service obligation, from the post office *i* which would not have been operated by the universal service provider, due to the fact that it is unprofitable, if he had no universal service obligation. The post office is unprofitable, if it suffered a loss,

i.e. $C_u > V_u$, where C_u is the cost of a post office and V_u is the revenue of the same post office.

It is assumed that the universal service provider would not operate unprofitable post offices and a part of the mail volume collected at these post offices with related revenues and costs would be handled by the remaining post offices.

The change in profit or loss of collecting activities is the sum of changes in revenue and cost for each post office resulting from a shift of collection activities from unprofitable to other post offices.

For assessment, whether a post office is unprofitable or not, the total cost of a post office shall be used.

Ndpi – is the change in profit or loss of **delivery** activities related to the postal items under the universal service obligation, from the post office *i* which would not be operated by the universal service provider, due to the fact that it is unprofitable, if he had no universal service obligation. The costs of these activities result from the changes in delivery conditions imposed as part of the universal service obligations, compared to the costs of the same activities under no universal service obligations in the same post offices.

It is assumed that the universal service provider would not operate the unprofitable areas or would serve them only to a limited extent, under different conditions and different quality.

The change in profit or loss of delivery activities is the sum of changes in costs of each delivery post office resulting from a change in method of delivery in unprofitable areas and decrease in revenues, as due to the changes in delivery some services could not be provided in unprofitable areas.

NPT – are the costs of **sorting and transport** related to the postal items which the universal service provider would not incur as a result of changes in the post office network and the delivery method, if he had no universal service obligation.

NR – are other costs (overheads) incurred by the universal service provider due to the universal service obligation.

TV – are the market benefits arising from the universal service provision. The following market benefits should be taken into account:

- benefits associated with the applicable taxation regime, such as exemption of universal services from VAT;
- Trademarks – Through the provision of universal service, the provider achieves strengthening of its brand. This benefit could be estimated for instance at the level of savings on relevant marketing costs. To value the overall trademark, a benchmark of marketing cost or copyright cost of a similar brand can be used, and then, the proportion related to the USO service can be calculated.
- Marketing effect - Post offices, vehicles and the uniforms of mail carriers represent an advertising space, which the universal service provider may use to promote its brand and services, or rent it to third parties. The marketing effect will be calculated as the proportion related to USO
- Economies of scale and greater bargaining power with suppliers;
- Any other tangible and intangible benefits (i.e. the ubiquity).

Profit – means a reasonable rate of return related to the universal services.

For the calculation of the net cost of universal service, the universal service provider shall submit to National Authority for Management and regulation in Communications of Romania, hereinafter *ANCOM*, in order to verify the net cost calculation, the following supporting data:

- The number of post offices which would be operated by CNPR if he had no universal service obligation;
- A list of unprofitable post offices, unprofitable areas and unprofitable users which CNPR would not serve if he had no universal service obligation. To set these elements it should be taken into account the cost efficiency (i.e. the losses incurred due to excessive postal office network in agglomeration area cannot be considered as a burden due to USO or some excessive costs will not be considered as universal service costs). Furthermore, user groups connected with provision of unprofitable products, which are not provided under USO, cannot be considered as a burden.;
- The post offices and/or the alternative ways of providing the universal services related to the areas and post offices which would not be served in the absence of the universal service obligations;

- The alternative post offices for commercial products provided at the counter for collecting activities in the areas which would not be served in the absence of the universal service obligations;
- The post offices and/or the alternative ways of delivery of products which fall outside the universal service (i.e. pensions) in the areas which would not be served in the absence of the universal service obligations;
- An alternative method of delivery of universal service products, in particular, registered and insured letters and parcels, indicating the maximum distance where the mail will be stored instead of delivery to door;
- Organization of the changed system of delivery, with the calculation cost impact of these changes in the absence of the universal service obligations. These should reveal the details about some elements like the delivery priority, delivery time, distance from the farthest submission place to the post office, areas operated by cars etc.;
- A list of areas in which the delivery activities would be operated as exemptions to the deadlines established through the present decision. It must be provided a description of number of delivery areas, organization of delivery areas, and calculation of financial impact;
- The volume of special services provided for free as a part of universal service (e.g. blind people articles) and related costs;
- A list of the post offices which are unprofitable due to the provision of universal service and a list of remaining post offices with the following supporting elements:
 - Data on costs and revenues of the unprofitable post offices according to Table no. 1;
 - Data on anticipated changes in costs and revenues for the remaining operated post offices according to Table no. 2. This will include mainly changes in material costs, energy consumption, delivery personnel staff costs etc.. The evaluation should be based on reasonable sources i.e. accounting system, sampling data, historical financial impact in similar situations, questionnaires, marketing studies etc.;
 - The costs of unprofitable post offices by category according to Table no. 3;
 - The increase in the costs of remaining operated post offices by category according to Table no. 4;
 - Data on the volume of shipments submitted and delivered and operations undertaken in unprofitable post offices according to Table no. 5;

- Characteristics of unprofitable post offices according to Table no. 6;
- Information on unprofitable delivery areas according to Table no. 7;
- Data allowing assessment of tangible and intangible benefits according to the Table no. 8;
- Data on costs of special services provided for free according to the Table no. 9.

Table no. 1 – Data on costs and revenues for the unprofitable post offices

Postal code	Post office	Revenues, in LEI							Costs, in LEI										Direct costs for posting area of the post offices	Indirect costs for posting area of the post offices		
		Letters and parcels	Postal payments	Utilities and phone bills	Financial services	Pension and benefits	Revenues from goods sold	Other revenues	Total Revenues	Material spent	Energy consumption	Cost of goods sold	Rent	Personal expenses of staff at the counter	Personal delivery staff costs	Depreciation	Other costs	Total costs				
	Post <i>i</i>																					
	Post																					
	Post <i>n</i>																					
Total								A														

Table no. 2 – Costs and revenues transferred from unprofitable post offices (i) on the remaining operated post offices (k) per unit *

Postal code	Post office	Operated post office	Types of revenues/costs (unprofitable = i /operated= k)	Row k – Revenues transferred to the operated post offices, in LEI							Row k – Increase in the costs of operated post office, in LEI										
				Row i – Revenues transferred from the unprofitable post offices, in LEI							Row i – Decrease in the costs of the unprofitable post office, in LEI										
				Letters and parcels	Postal payments	Utilities and phone bills	Bank services	Pensions and benefits	Revenues from goods sold	Other revenues	Total Revenues	Material spent	Energy consumption	Cost of goods sold	Rent	Personal expenses of staff at the counter	Personal delivery staff costs	Depreciation	Other costs	Total Costs	
	Post office	Post office	i/k																		
	Post office	Post office	i/k																		
	Post office	Post office	i/k																		
	Post office	Post office	i/k																		
	Post office	Post office	i/k																		
	Post office	Post office	i/k																		
																			
	Total i										B										
	Total k										C										

* Data should provide information regarding the link between each unprofitable post office and the related operated post office in respect of the revenues and costs assigned to them.

Table no. 3 – Costs of unprofitable post offices by category

Activity	Costs of unprofitable post offices, in LEI								
	Material spent	Energy consumption	Cost of goods sold	Rent	Personal expenses of staff at the counter	Personal delivery staff costs	Depreciation	Other costs	Total Costs
Clearance activities									D
Delivery activities									E
Sorting and transport activities									F
Indirect costs									G
TOTAL:									

Table no. 4 – Increase in the costs of operated post offices by category

Activity	Increase in the costs of operated post offices, in LEI								
	Material spent	Energy consumption	Cost of goods sold	Rent	Personal expenses of staff at the counter	Personal delivery staff costs	Depreciation	Other costs	Total Costs
Clearance activities									H
Delivery activities									I
Sorting and transport activities									J
Indirect costs									K
TOTAL:									

Table no. 5 – The volume of shipments submitted and delivered and operations undertaken in unprofitable post offices

Post office		Number of collected shipments					Number of delivered shipments							Contractual operations - number of pieces				
		Common letters	Addressed direct mail	Registered and insured letters, official shipments	Parcels and insured parcels	Other submitted shipments	Common letters	Addressed direct mail	Registered and insured letters, official shipments	Parcels and insured parcels	Periodic shipments, press	Unaddressed direct mail	Express and other shipments	Pensions and benefits paid at the counter	Pensions paid by delivery staff	Bills conducted at the counter	Bills conducted by the mail carrier	Bank services
Postal code	Post office																	
	Post office <i>i</i>																	
	Post office																	
	Post office <i>n</i>																	
TOTAL:																		

Table no. 6 – Characteristics of unprofitable post offices

Postal code	Post office and related delivery area	Type of the post office: posting (P) / delivery (D)	The building of the post office: own (V) / rented (N)	Opening hours for the public - the number of hours per week	Distance from the farthest submission place to the post office in kilometres	Number of villages served - the catchment area	Number of delivery areas	Number of delivery out-boxes of which: number of motorized areas		Number of delivery addresses	Number of workers	Number of staff at the counter	Number of delivery staff	Post Office, which takes over catchment area under counterfactual scenario	Time of arrival of courses – base scenario	Time of arrival of courses - according to counterfactual scenario
	Post office <i>i</i>															
	Post office															
	Post office <i>n</i>															

Table no. 8 – Quantification of market benefits

	Benefits					Total market benefits
	1.	2.	3.	4.	5.	
	Tax benefits	Trademark	Marketing effect	Economies of scale and higher bargaining power with suppliers	Other tangible and intangible benefits	
TOTAL:						

Table no. 9 – Costs of specific products provided for free

	Volume of services provided for free	Costs related to services provided for free	Unit cost
Service 1			
Service 2			
Service 3			
...			
...			
...			
Service <i>n</i>			
TOTAL:			

GUIDELINES for using the data needed to identify the values of the parameters included in the net cost calculation formula

Nppi should be calculated based on the following instructions:

- The clearance costs related to unprofitable post offices (D from Table no. 3) will be reduced with the increased value of the clearance costs assigned to the operated post offices (H from Table no. 4)
- Then the revenues transferred by unprofitable post offices to the operated post offices (C from Table 2) reduced with the revenues of the unprofitable post offices (A from Table 1) will be added.

Ndpi is the difference between costs of delivery related to the unprofitable post offices (E from Table 3) and the increased value of the costs of delivery associated to the operated post offices following the transfer from the unprofitable units (I from Table no. 4)

NPT is the difference between the sorting and transport costs of the unprofitable post offices (F from Table no. 3) and the increased value of the sorting and transport costs related to the operated post offices following the transfer from the unprofitable units (J from Table no. 4).

NR is the difference between the general costs related to the unprofitable post offices (G from Table 3) and the increased value of the general costs associated to the operated post offices following the transfer from the unprofitable units (K from table 4).

As a general rule, costs or revenues from an unprofitable unit cannot be transferred to an operated unit if these are higher than the total costs/revenues of the related unit.