

**MINISTRY OF TRANSPORT AND COMMUNICATIONS DECREE ON THE MINIMUM
RATE OF A FUNCTIONAL INTERNET ACCESS AS A UNIVERSAL SERVICE**

Background

Communications Market Act

Provisions of the Communications Market Act (393/2003) concerning universal service were first reviewed in an amendment (70/2007) that entered into force on 15 February 2007. In the amendment a more technology-neutral approach was adopted to the concept of universal service. The provision of universal service is no longer bound to fixed telephone network alone, but any communications network, regardless of the technology, may be used. The provisions regarding universal service were again reviewed in an amendment (331/2009) that entered into force on 1 July 2009.

In accordance with section 59(1) of the Communications Market Act, the Finnish Communications Regulatory Authority (FICORA) must assign one or more telecommunications operators, operators providing a directory inquiry service or operators providing a telephone directory service as universal service operators if this is necessary in order to ensure universal service provision in a certain geographic area.

According to section 60c a designated universal service operator must provide a reasonably priced subscriber connection to a public communications network at the user's permanent place of residence or location regardless of the geographical location.

According to section 60c(2) a subscriber connection provided as universal service must permit telephone services and a functional Internet access, taking into account prevailing rates available to the majority of subscribers, technological feasibility and costs. Section 60 c(3) of the Act states that provisions on the minimum rate of a functional Internet access are issued by a decree of the Ministry of Transport and Communications. It is stated under the same section that prior to the issuance of the decree, FICORA must examine the data transfer service markets, prevailing rates available to the majority of subscribers and level of technological development, and estimate the financial impacts of the regulation.

Government Resolution

To improve the information society infrastructure the Government adopted a Resolution on the national action plan on 4 December 2008. The aim of this broadband project is, in the first stage, to ensure access to a broadband connection with an average rate of at least one Mbit/s to all permanent residences, offices of businesses and public administration bodies.

Independently from universal service regulation, the aim of the second stage of the broadband project is that by the end of 2015 nearly all (more than 99 percent of population) permanent residences and permanent offices of businesses or public administration bodies are no more than within two kilometres of a connection permitting 100 Mbit/s. In urban areas, high-speed broadband connections will most likely be established on commercial terms as scheduled, which will extend the population coverage to 95%.

Extending the coverage to 99% requires that the construction of high-speed connections to around 120,000 households in non-built-up areas will in part be funded through public subsidies. The Ministry of Transport and Communications has been allocated a total of 66 million euros for subsidies for 2009–2015. A majority of optical fibre connections in sparsely populated areas are meant to be built as projects open for competitive bidding in 2010–2015.

Section 1

Subsection 1

In section 1(1) a functional Internet access refers to an Internet connection with a downstream speed of 1 Mbit/s.

The approach is technologically neutral. A service provider designated as a universal service provider may decide the technology it wishes to use for providing its customers with the service. Thus the definition of the required connection rate allows a connection in the current fixed communications networks, @450 networks provided by Digita Oy, and third generation mobile networks.

The speed requirement has been limited to downstream traffic, because it is not realistically possible to introduce it for upstream traffic in mobile networks.

As mentioned above, the decision about the universal service connection rate of 1 Mbit/s was adopted in the Government Resolution. FICORA's data on the market situation suggested that a reasonable minimum rate of a functional Internet access would be 1 Mbit/s.

According to FICORA, in 2008 a total of 70% of Finnish households had access to the Internet and 96% of them were broadband. At the end of 2008, in nearly 60% of all fixed broadband connections the rate was at least 2 Mbit/s.

Subsection 2

According to subsection 2, notwithstanding the provisions of subsection 1, it is sufficient that the average minimum rate of downstream traffic of an Internet access is 750 Kbit/s in a measuring period of 24 hours and 500 Kbit/s in any 4-hour measuring period.

The actual rates of broadband connections vary depending on the terminal device, user location, environment and mobility, for example. The actual speeds also vary at different times of day depending on other traffic loading the network.

The rate provided in subsection 1 must, therefore, allow some variation. To ensure high quality of the service, the lowest permitted level under the average must also be defined.

Measuring periods referred to in the Decree are for 24 hours and four hours. The measuring periods are such that the operators can implement them without any unreasonable extra cost but still ensuring a sufficient service level for the users.

The provision in the Decree about measuring the rate will be implemented in accordance with an order (58/2009 M) issued by FICORA.

Section 2

Entry into force

Subsection 1 includes provisions on the entry into force of the Decree. As of 1 July 2010 the Decree applies to any Internet access provided by an operator that has been designated as a universal service operator after the entry into force of the Decree.

According to subsection 2 measures necessary for the implementation of the Decree may be undertaken before the Decree's entry into force.

Impacts

The starting point in the Government Resolution, and in legislative proposals amending the Communications Market Act and the Act on Radio Frequencies and Telecommunications Equipment was that telecom operators continue to comply with the universal service obligations without public funding and there will be no need to take any measures referred to in section 60b of the Communications Market Act to compensate unreasonable financial encumbrance.

In the drafting process, telecom operators pointed out that complying with the required service level in mobile networks, in particular, could incur expenses to the operators. This might result in requests addressed to FICORA for making a net cost calculation referred to in section 60b(2) of the Communications Market Act.

Setting the rate of a functional Internet access in universal service to 1 Mbit/s promotes the development of information society and facilitates the involvement in information society. Comprehensive high-speed data transfer connections also improve the operating environment for businesses and provide better opportunities for telework across Finland.

The Ministry of Transport and Communications monitors the development of technology and markets in general and access rates required in electronic services in particular. As the information society develops, the minimum rate required for a functional Internet access as a universal service will be reviewed. The reviews will also make it possible to take the duplex communication into consideration and set a minimum level for upstream traffic too.

Drafting process

The Decree, which was drafted by the Ministry of Transport and Communications, was sent out for comments to an extensive list of involved parties.

The comments clearly showed the opposite views between telecom operators and parties representing the users of universal service Internet access. The telecom operators pointed out the challenges that the required service level will pose to a universal service provider, both in terms of achieving and ensuring the level. On the other hand, representatives of special groups and public organisations called for symmetry in universal service Internet access and considered the range in the required access rates too wide. The rate of 1 Mbit/s in downstream traffic for a functional Internet access is a compromise between societal needs and the challenges presented by telecom operators.

Entry into force

The Decree enters into force on 15 October 2009.