

Universal Service in Telecommunication

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The 20th century has been the century of the information technology industry all around the world. Services and the variety of products have rapidly increased in the field of telecommunication. However, inequalities occurred with the terms such as “digital division” in the access of information and communication technologies.¹ According to the “Human Development Report” prepared in 1999 within the framework of the United Nations Development Programme (UNDP), current access to information technologies has an important role in economic development, education, health and public administration. On the other hand, this access increases inequality, dividing the educated from the illiterate, the rich from the poor, the urban population from the rural and the English-speaking populace from people who do not know the language.² As a conclusion, some telecommunication services should use the term “universal service” to prevent social gaps in society.

Universal service means that every citizen of a country can easily access the telecommunication services without any discrimination such as language, religion, ethnicity and geographical location or current economic situation.^{3,4} We can include universal services under the heading of public services because of their features; therefore, nobody can be deprived of these services because of economic, social or geographic reasons.⁵ One of the most essential elements of being an information society is the concept of “universal service.” Universal service is a dynamic and a comprehensive concept. The aim of this concept is that all of the citizens of a country shall benefit from telecommunication services without any social and economical barriers. Universal service is the essential feature of telecommunication policy as well.

Some concepts such as “general economic benefit service,” “minimum service,” and “universal service” have been recently used instead of public service in European Union Law with the liberalization of

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¹ Sayısal Uçurum (Numerical Gap); Dünya ve Türkiye’de Durum (<http://www.tubitak.gov.tr>)

² Sayısal Uçurum; p. 9.

³ KARAKURT Alper (Competition Expert); Evrensel Hizmet Yükümlülüğü (Universal Service Obligation), p. 2.

⁴ Courtesy, Prof. ALLEMAN James, University of Colorado at Boulder, Network Economics and Finance I, Lecture 24 , http://en.wikipedia.org/wiki/Universal_service/References.

⁵ KARAKURT; p. 10.

telecommunications.^{6,7} In other words, universal service is the new name for public service with its new context and its new expression in European telecommunication. When we compare universal services with public services, universal services are more limited than public services. However, universal services include minimum services for modern humanity and additional subservices.⁸ In other words, universal services mean providing a group of minimum services to all users, at an affordable price according to the economic situation of a country, without distorting competition.

An agreement was signed between the member countries of the World Trade Organization for the Basic Services of Telecommunication in 1997 (Basic Telecommunications Agreement).⁹ A framework regarding universal service has been formed after several studies related to this agreement. According to this framework, each member country has the right to define its choice of type of universal service obligation. These obligations shall not be implemented against the rules of competition, shall be objective for transparency and competition, and shall not burden the predefined universal services for countries. Today, all of the telecommunication services are in competition; for this reason the definition, principles of universal services and sustainability and development of those principles of the concept of universal service shall be guaranteed. The objective accomplished with the approach of the European Parliament and European Council “to guarantee universal service” is underlined in the fundamental principles. There shall be elements of universal service “to provide the access of all users to a predefined quality service at an affordable price regardless of their geographical location.”¹⁰ In other words, universal services shall have predefined quality,¹¹ geographical location shall not be regarded and universal services shall be available to all users at an affordable price.¹²

A guideline was published for the National Regulatory Authorities in the annex of the report by the European Council entitled “Qualification Criteria

⁶ GÖZÜBÜYÜK Şeref/TAN Turgut; Administrative Law, Fundamental Elements, V.1, 2, Turhan Kitabevi, Ankara 2001, p. 542.; İŞTEN İnanç (Hkm. Bnb.); The Term and elements of Public Service, N. 22, p. 6. (http://www.msb.gov.tr/ayim/Ayim_makale_detay.asp?IDNO=74).

⁷ SALMAN Banu; Telecommunication from Public Services to Universal Services, Electrical Engineering, N. 430., April 2007, p. 1. (http://www.emo.org.tr/resimler/ekler/39a4ba7e9fbd80f_ek.pdf?dergi=1); CREMER,H./GRIMAUD F. A./LAFFONT J. J; Universal Service: An economic perspective, Institut d'Economie Industrielle, Université de Toulouse I.

⁸ BROWNING John; Universal Service (An Idea Whose Time Is Past), p. 1. (http://www.wired.com/wired/archive/2.09/universal.access_pr.html); ULUSOY Ali; Kamu Hizmeti Anlayışında Yeni Yönelimler: Avrupa Yapılanmasının Kamu Hizmeti Teorisine Etkileri, p. 301.

⁹ Turkey is a member of WTO. <http://www.wto.org>.

¹⁰ SAUTER Wolf; Services of General Economic Interest and Universal Service in EU Law, European Law Review 2008.

¹¹ KARAKURT; p. 6.

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http://ec.europa.eu/information_society/policy/ecommm/todays_framework/universal_service/index_en.htm.

for the National Program in Costing and Funding of Universal Services” in 1996.¹³ Three fundamental elements of universal service for national programs were emphasized. The first one is to calculate the net cost of universal service; the second one is who shall be the contributors for the funding and determination of the costs to share and the last one is the funding mechanisms for the obligation for universal service.¹⁴ These principles were defined in detail in the Universal Service Directive published by the European Community in 2002. As a conclusion, the concept of universal service shall be essential as the outcome of the competition of all telecommunication services and with the privatization of state enterprises, government loses its determining role, because private sector entrepreneurs usually do not make any investments for nonprofit purposes. If we would like to catch up to the information and technology society, we should present some minimum services to our people. So to speak, this is the binding duty of the government.

Universal Service in Turkey

As mentioned above, with the developments in the world, Turkey has also defined universal service in Turkey under the name of “minimum service” in Law No. 406. According to Law No. 406, minimum service means, “...minimum universal services such as fixed telephone services, public payphone services, and telephone directory services are to be provided in the printed or electronic media and emergency calls services which are accessible to anyone within the territory of Republic of Turkey regardless of the geographical position, and which are to be offered at a predefined level of quality and at an affordable cost. Unfortunately, the definition of minimum service has been taken out of Law No. 406 with Article No. 11 of Law 5369, dated 16 June 2005.

This provision for minimum service had limited the scope of universal service because the services had been provided in a monopolist mentality during that period. For this reason, an appropriate study about the significance of universal services has been carried out by the Ministry of Transport and submitted to the Prime Ministry; finally a new law was enacted. According to this law, we can say that the formation and the functions of universal service are compatible with legal principles.

According to Article 1 of Law No. 5369 on the Provision of Universal Service and Amendments to Certain Laws about Universal Service, the purpose of this law is to govern the rules and procedures for the implementation of services.¹⁵ Articles 2 and 3 are about the principles of universal services^{16,17} Article 4 underlines that, operators, which have a

¹³ http://www.fcc.gov/wcb/tapd/universal_service/.

¹⁴ <http://www.ntia.doc.gov/opadhome/uniserve/univweb.htm>.

¹⁵ Article 1- The purpose of this law is to lay down the rules and procedures to govern the provision and implementation, and fulfillment in the electronic communications sector, of the universal service which has the qualities of a public service, but is financially challenging for operators to provide.

¹⁶ Article 2- For the purpose of this law: The Ministry means the Ministry of Transport, The Authority means: the telecommunication authority. Electronic communications’ means

general authorization, concession and authorization agreement or a license in the telecommunication sector, are incumbent universal service providers. The scope of universal service has been expressed. According to this explanation universal services are fixed telephone services, public payphone services, telephone directory services (printed or electronic media), emergency calls services, basic internet services, passenger transportation services for settlements to which maritime lines is the single option of access as well as communications services regarding distress and safety at sea.

The scope of universal service becomes dynamic and may be redefined according to the social, cultural, economic and technological conditions of the country under this article.

Article 6 is about the revenues for universal service. The revenues for universal service are as follows:

- a) The Authority shall declare to the Ministry 2% of the authorization and concession agreement, as well as the license and general authorization amount, by the end of the month following the date of authorization,
- b) Operators other than GSM operators, and Türk Telekom, shall declare to the Ministry 1% of their annual net sales proceeds by the end of April of the following year,
- c) GSM operators shall declare to the Ministry 10% of the share they are to pay to the Treasury within the month of payment,

transmission, emission and reception through cable, wireless, optical, electric, magnetic, electro magnetic, electro chemical, electro mechanic and other transmission systems of all kinds of signs, symbols, voice and images and all kinds of data which can be converted into electric signals, 'universal service' means the electronic communications services, including access to Internet, which is accessible to anyone within the territory of Republic of Turkey regardless of the geographical position, and which is to be offered with a predefined level of quality and minimum standards in return for reasonable prices affordable to anybody, 'the incumbent universal service provider' means the operator incumbent and authorized to provide the services hereunder in accordance with the authorization and concession agreements as well as licenses and general authorizations within the electronic communications sector, 'net cost of the universal service' means the net cost difference between the situation ensured by a given operator in order to fulfill the requirements of his obligation to provide universal service and the situation in which such operator would be if it never undertook the obligation, 'the operator' means a capital company providing electronic communications services and/or operating electronic communications infrastructure under an authorization agreement or a concession agreement concluded with, and/or a license or a general authorization obtained from, the Authority,

Article 3- Provision of the universal service and regulations to be made in this regards shall consider the principles that: a) anybody living in the territory of Republic of Turkey, without any discrimination on the basis of region and place of residence, shall avail himself/herself of the universal service. b) Universal service may be fulfilled also with consideration to the gross domestic product per capita and shall be offered at reasonable prices. c) Measures as to pricing and feasibility of technology options shall be taken with a view to ensuring that those with lower incomes, the disabled and the groups in need of social assistance can also benefit the universal service. d) Universal service shall be offered to predefined service quality standards. e) Continuity is essential to the provision and access to the universal service.

¹⁷ İŞTEN; p. 8.

d) The Authority shall declare to the Ministry 20% of the administrative penalties it has applied under the Wireless Law No. 2813, dated 5 April 1983, and the Telegram and Telephone Law No. 406, dated 4 February 1924, by the end of the month following the month of collection,

e) The Authority shall declare to the Ministry 20% of the amount remaining after all expenditure is met at the end of the fiscal year by the end of January every year.

Article 7 defines the net cost of universal service. The net cost of universal service shall be calculated on the basis of the difference between the net cost when the incumbent operator does not provide services within the scope of universal services and when it provides such service as an incumbent universal service provider. However, the calculation of the net cost of the universal service shall also take into consideration the benefits to be obtained by operators due to their incumbency to provide universal service. This calculation suggests that the additional cost load brought about by the obligation to universal service shall be based on net costs.

Article 8 and 9 are about universal services to be implemented by an organization of Ministry of Transport.¹⁸ However, in Article 10, Türk Telekom is responsible for auditing the quality and standards of universal service. Generally, national regulatory authorities are responsible for the implementation of universal service in Europe. However, the government is responsible for the universal services in some countries as well. With the abovementioned law, universal telecommunication services shall be implemented by a ministry but audited by the national regulatory authority. In our opinion, this is the best system for universal services. This system is

¹⁸ Article 8- The following item (l) shall be incorporated in Article 2 of the Law No. 3348 on the Organization and Duties of the Ministry of Transport dated 9.4.1987: l) Formulating universal service policies under the applicable laws with due consideration to the country's social, cultural, economic and technologic circumstances; taking measures aimed at implementing the general policy of the Government; laying down the rules to ensure the conduct of the universal service; monitoring their implementation; and approving the calculations related to their net cost.

Article 9- Following items shall be annexed to the Law No. 3348 to follow item (g) of Article 13 and the former item (h) shall be changed as item (o).

h) Setting out, and monitoring the implementation of, rules to ensure the conduct of universal service to the legislative provisions pertinent to the provision of the universal service; and ensuring that operators' net costs are met, ı) Selecting the incumbent universal service provider on the regional and national level from among operators requesting to provide services coming under the scope of the universal service, j) Making payments to incumbent universal service providers, k) Monitoring and auditing the incumbent operator to find the net cost of the universal service and whether it is within the set out rules and procedures or causing the same to be supervised by independent auditors, in which case expenses shall be met through universal service revenues, l) Prescribing rules and procedures to ensure that the people in need of social protection such as those with lower incomes and the disabled benefit the universal service on the basis of equality and impartiality and on affordable pricing terms. m) Designating temporary incumbent universal service providers, where required, in order that services are made available to high-cost areas including places distant to the center and rural areas under the terms and conditions to be established, n) Prescribing the method to be used for the calculation of net costs of operators incumbent to provide the universal service.

appropriate for the universal service directives of the European Community and compatible with the general board as well where the general board means national regulatory authorities, which are regulation authorities but not an executive authority. As a conclusion, the troubles that may occur after the liberalization and privatization in the telecommunication sector for services shall be prevented with this law.

CONCLUSION

Universal service is a kind of public service with its social and economic position for us. However, the implementation of regulation of universal services by the government in accordance with the predefined policies and principles is an essential development. Universal services shall be accessible to anyone within the territory of the country regardless of the geographical location and region, and these services shall be offered at reasonable prices affordable to anybody, standards and the quality of services shall be accurate and permanent. All these conditions shall be guaranteed.