

Universal Communications Service Access Fund Regulations

G.N. No. 108 (contd.)

Expiry 4. This Order shall expire immediately after The Tanzania Communications Regulatory Authority releases the funds required for the establishment of Universal Communications Access Fund.

Dar es Salaam,
27th April, 2009

HON. PETER M. MSOLLA, (MP.),
*Minister for Communications,
Science and Technology*

GOVERNMENT NOTICE No. 109 published on 8/05/2009

THE UNIVERSAL COMMUNICATIONS SERVICE ACT

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THE UNIVERSAL COMMUNICATIONS SERVICE ACT

CAP. 422

REGULATIONS

(Made under section 28)

THE UNIVERSAL COMMUNICATIONS SERVICE ACCESS FUND REGULATIONS,
2009

| | |
|---------------------------|--|
| Citation and commencement | 1. These Regulations shall be cited as the Universal Communications Service Access Fund Regulations, 2009 and shall come into operation on the date of publication. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires: "Act" means The Universal Communications Service Access Act; "Authority" means the Tanzania Communications Regulatory Authority; "Board" means the Board of Universal Communications Services Access Fund established under section 7 of the Act; "Chairman" means the Chairman of the Board of the Universal Communications Service Access Fund and includes the Vice Chairman and the person for the time being acting as Chairman; "communication services" means services for the provision of postal, electronic communications and content services; "content services" means information in the form of speech or other sound data, text or images whether still or moving, except where transmitted in private communications; "contribution" means amount payable to the Fund in any manner, by individual, legal entity whether local or foreign for a purpose of financing universal service area; "electronic communication services" means any transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choice; "forward-looking services" are communications services that are of a kind that will be required in the longer term and which are deployed |
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using platforms, systems and equipment that are scalable and capable of being expanded and extended in terms of their ability to provide more services as required into the future;

“Fund” means the Universal Communications Services Access Fund established under section 4 of the Act;

“internet access service” means an applications service whereby a person is able to access internet services and applications in conjunction with either a dial-up connection or a direct connection;

“levy” means the amount payable by a licensee to the Fund as spelt out under section 23 of the Act;

“manager” means the Manager of the Fund appointed under section 9 of the Act;

“member” means a member of the Board of the Fund and includes the Manager;

“Minister” means the Minister responsible for communications;

“postal services” deliverance of letters up to 500gms, parcel and packets of up to 10kgs, literature for means basic postal services which includes the acceptance, conveyance and the blind and postal financial services delivered at tariffs regulated by the Authority;

“programme” means a series of related communication projects in which a later project builds on the work achieved in an early project, in whole or in part to extend the communications network further and to make it available to more communities and individuals;

“public payphone service” means a telephone available to the general public, for the use of which the means of payment are coins or credit or debit card or pre-payment cards or any of them;

“set of communication services” means voice and communication (including payphone services and emergency services), audio visual communication, being point to point or point to multi-point;

“training centres” means learning institutions including vocational training centres;

“underserved areas” means designated geographical areas by the Fund where there is reduced availability of communication services;

“universal service areas” means designated geographical areas by the Fund where there is reduced availability of communication services;

“universal service provider” means a person designated to provide universal services;

“universal services” means a defined minimum set of communications services of specified quality which shall be available to all users independent of their geographical location and at an affordable price; and

“urban underserved area” means an area within an urban area which does not have community or individual access to Universal Services and is so designated by the Fund.

PART II
UNIVERSAL SERVICE PROVISION

Applica-
tion

3. These Regulations shall apply to the universal service obligation comprising the following key elements—

- (a) the specification of the universal service obligation;
- (b) the designation of the universal service providers and areas;
- (c) the carrying out of universal service plans; and
- (d) the assessment, collection, recovery and distribution of the universal service levy.

Objectives
Universal
Service

4.—(1) The Fund shall meet the following universal service objectives—

- (a) the allocation of the resources available to the Fund in a manner that will, over time, provide the most forward-looking universal services to the most people in the shortest time;
- (b) the allocation of resources available to the Fund to forward-looking services that will meet current and future needs of communities and individuals for communications, and
- (c) the allocation of resources available to the Fund to ensure that individuals and communities in underserved areas have equitable access to the benefits of the communications services provided as a result of Universal Communications service Access Funding;

(2) Notwithstanding the provisions of sub-regulation (1), the fund shall ensure that the following principles are adhered thereto—

- (a) the Principle of Transparency where by the Fund shall publish annually the reasons for the priority classifications and the content of the priority rules that inform its overall plan;
- (b) the Principal of Utility and Value where by the Fund shall assess the merits of competing projects for available funds on the basis of the comparative utility and value delivered;
- (c) the Principle of Technology Transparency where by the Fund shall not specify the technology to be employed to deliver services for projects or programmes subject to bidding, but shall nominate the services and the service quality levels to be provided;
- (d) the principal of Continuity the Fund shall give appropriate recognition to the need to continue to provide services after initial deployment, and thereby support the applications and uses that have developed in each community based on the axistence of the service;
- (e) the Principle of Intergrated Service Planning and Provision where by the Fund shall require that bidders for funds should show how their plans provide for the intergrated planning and provision of all communications services to the areas to which the bids relate; and
- (f) the Principle of Technology Futures where by the Fund shall require that the bidders for funds shall demonstrate that the technologies they propose to employ-
 - (i) are proven and not experimental or subject to any substantial professional reservation in terms of being fit for purpose in the circumstances in which they are planned to be deployed;

- (ii) are scalable and capable of being augmented in terms of capacity and scope to meet foreseeable demand for additional service by new or existing users;
- (iii) are unlikely to be made obsolete or obsolescent or be displaced by different technology in the foreseeable future; and
- (iv) may be supported by the relevant equipment vendor and the carrier into the foreseeable future.

Universal
Service
Levy

5.-(1) All holders of communication licences shall be required to pay to the Fund a universal service levy of 0.3 percent of their yearly gross operating revenue.

(2) The percentage for calculating the universal service levy shall be reviewed by the Fund every two (2) years after consultation with stakeholders in the communications industry;

(3) The source of the gross operating revenue shall be calculated at the gross communication sales revenue excluding any amount that is earned from an activity outside the communications industry.

(4) The universal service levy shall be paid quarterly in arrears.

(5) Any universal service levy delayed for more than thirty days shall attract interest at the prevailing official bank lending rate.

Verifica-
tion of a
licensee's
gross
operating
revenue

6.-(1) For the purpose of ensuring that there is accurate submission of information for payment of Universal Service Levy, the Fund shall have power to verify a licensee's gross annual operating revenue.

(2) The Fund shall take into consideration such further information or other documents provided by a communication licensee in verifying the gross annual operating revenue.

(3) Where such further information or other documents required under sub regulation (1) and is not provided by the licensee within the time granted by the Fund, the fund may make a decision on the return.

(4) Any universal service provider who fails to comply with this regulation commits an offence under these Regulations.

Determi-
nation of

7.-(1) In determining whether an area is a rural or urban underserved

area, the Fund shall consider the following factors-

- (a) rural settlement where is a permanent population that is significant for the purposes of allocating resources from the Fund; and
- (b) in the case of urban settlements, where there is adequate access to communications services by the community.

rural and
urban
under-
served
areas

(2) Before making a determination pursuant to sub-regulation (1), the Fund shall publish the definitions that it proposes to use for "significant" in the case of a rural settlement, and of "adequate" in relation to urban settlements, having regard to the desirability of the meaning of those terms changing over time as the activities of the Fund and the dynamics of the communications industry in Tanzania take effect.

(3) Where the Fund has not published the definitions that it proposes to use, pursuant to sub-regulation (2), the Fund shall operate on the basis that-

- (a) a rural underserved area shall be a rural settlement of not less than five hundred people;
- (b) an urban underserved area shall be an urban area in which communication services are available for use by less than fifty percent of the population; and
- (c) settlements or areas adjacent to urban areas may be treated as urban for this purpose.

(4) The Fund shall specify as many separate areas as are considered feasible having regard to-

- (a) the viability of an area to support a programme approach to universal service;
- (b) the natural geographic contours of the country that may be conducive to the development of transmission services connecting multiple areas and communities;
- (c) separate community locations and the permanency of community settlements and population levels; and
- (d) the special circumstances of remote rural communities.

8.—(1) The Fund shall prepare budgets based on the allocation of available financial resources to serving underserved areas having regard to the objectives in Regulation 4.

Priority
setting
for
allocation
of
financial
resources

(2) The Fund shall develop its budget for serving underserved areas to reflect the priority that the Fund is giving to each project or programme relative to another projects and programmes in the budget, and relative to projects and programmes that have failed to be included in the budget and which have, as a result of the budgetary constraints, been deferred for future consideration.

(3) Without detracting in any way from the objectives in Regulation 4, the Fund shall give priority to-

- (a) projects that are part of overall regional or area programmes that include optimal network extensions via areas covered in related projects;
- (b) the continuity of existing services in underserved areas or to areas that would be in danger of becoming underserved if some of the current services were withdrawn;
- (c) new projects and programmes that are likely to be commercially viable if the initial capital required is supplemented on a once-only basis;
- (d) new projects or programmes that involve the integrated provision of all communications services; and
- (e) in the case of internet services, where access is provided to:
 - (i) Government owned schools;
 - (ii) National, Regional and District libraries established by Regional, District and Village Governments;
 - (iii) National, Regional and District hospitals;
 - (iv) Community centres; and
 - (v) Training centres.

PART III

SUBMISSION OF UNIVERSAL SERVICE PROPOSALS, EVALUATION PROCESS AND APPEAL MECHANISM

Project
proposal
require-
ments

9.-(1) Before designating a universal service provider for communications projects and programmes to be undertaken in a universal service area, the Fund shall require that the communications licensee concerned shall submit for the Fund's approval a plan containing the following-

- (a) areas where the communication services shall be provided or the list of communities benefiting there from, as well as their geographical location and population;
- (b) description of the services requested and the specification of the facilities and related equipment including special measures for disable users, if applicable;
- (c) the timetable for the provision of communication services;
- (d) the capital cost for the provision of communication services;
- (e) the estimates of the operating costs for the implementation of the universal service;
- (f) proposed retail tariff;
- (g) quality of service in relation to communication services to be delivered;
- (h) a statement of how the plan relates to the Objectives in Regulation 4.

(2) The Fund may require amendments to the Plan submitted pursuant to sub-regulation (1) to better achieve the Objectives in Regulation 4 but the licensee shall not be required to implement the amended plan unless he, and the Fund agree to the amendments.

10.-(1) Funds for universal services subsidy shall be awarded through a public bidding in accordance with the Public Procurement Act.

(2) The invitation to tender for universal service subsidy shall contain the following minimum information.

- (a) the entity calling the tender;
- (b) the venue and dates for the delivery of the conditions and the price thereof;
- (c) term for the submission of the proposals ;
- (d) venue, date and time when the receipt of proposals shall take place;

Bidding
process
for
universal
service
subsidy
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R.E.2007

(e) venue and deadline for submission of any inquiries by the bidders; and

(f) tender opening, date and venue.

(3) The Fund shall advertise the tender invitation in local newspapers.

(4) The Fund shall be responsible for the preparation of the bidding conditions. The conduction and full execution of the tenders shall be entrusted to an Evaluation Committee or alternately to an institution that is independent from the Fund.

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R. E. 2007

(5) The bidding conditions for awarding universal service subsidy shall be in accordance with the Public Procurement Act.

(6) In the event that a public bidding is called and no bidders apply, the Evaluation Committee shall call it off and the Fund may-

(a) call a new public bidding immediately thereafter, with or without changes to the terms and conditions; or

(b) defer the bidding until such future time as the Fund considers appropriate.

(7) The bidding shall also be declared null and void if, after taking place, none of the bidders is declared qualified according to the evaluation specified in the conditions.

Evaluation
criteria

11.-(1) The evaluation criteria for bids on universal service subsidy shall include the followings or more-

(a) whether such submission covers matters requested under this regulation;

(b) whether such submission is efficient and economically practicable;

(c) whether proposed retail tariff is in such a way that those on low incomes or with special social needs are not prevented from accessing or using communication services;

- (d) whether such submission or project can be implemented progressively within such period as the Fund considers reasonable;
- (e) Whether such submission or project is the lowest financing or subsidy requested for designated Universal Service areas; and
- (f) any other criteria the Fund deems relevant.

(2) The Fund may, at any time before approving the universal service project, request the licensee to provide such further information or other documents within the time specified in the request or any extension of time granted by the Fund,

12. After evaluation of the bids for universal service subsidy the Fund shall award the universal service subsidy to the bidder that it determines has the bid that most closely meets the objectives of universal service.

Award of
universal
service
subsidy

13.— (1) The Fund shall enter a financial agreement with the successful bidder prior to disbursement for the provision of universal services.

Financial
agreement

(2) The financial agreement referred to under sub-regulation (1) shall include the following-

- (a) universal service (s) to be provided;
- (b) universal area to be covered;
- (c) rollout plan and implementation period;
- (d) project description;
- (e) operation and maintenance commitment and guarantees for such commitments, if applicable;
- (f) procedure and schedule of payments;
- (g) supervision and control mechanism, which shall include a commitment to report the progress of the project from time to time;
- (h) breach of agreement and consequences; and
- (i) arbitration clause.

(3) The financial agreement shall be executed by the successful bidder within thirty (30) days following the award of the communications service

(4) In the event that the financial agreement is not executed within the term established, the evaluation committee shall award the contract to the bidder who ranked second in the bidding process, provided it has also been qualified according to the terms thereof. Should this second bidder fail to execute the Financial agreement, the evaluation committee shall call off the bidding.

(5) Disbursements and refunds shall be made through local banks and or financial institutions. The Fund may enter into a trust agreement with a prime bank or financial institution to handle the disbursement of funds, according to the Financial Agreement.

(6) Where the successful bidder fails to comply with the terms and condition of the financial agreement with the Fund, the said agreement shall be terminated and the bidder shall refund the total financing amount received, without prejudice to the penalties that may be applicable as provided for by the financial agreement.

(7) A bidder who has defaulted in the financial agreement may not request new funds, from the Fund, whether directly or indirectly, and shall be subject to the legal actions that may arise from such default.

Univesal
service
project

14.— (1) The Fund shall supervise the universal service projects to ensure the successful implementation.

(2) In carrying out supervision the following shall be taken into account-

- (a) equipment, materials, installation and other scheduled activities, pursuant to the provision of the financial agreement;
- (b) operation and maintenance, including quality, availability and continuity of the services, hours of services attention, traffic and other relevant elements;
- (c) financial and legal supervision; and
- (d) other issues which the Fund may consider necessary to ensure the proper use of the services required.

(3) The supervisors are responsible for recording any deviations or transgressions that might exist in the project, issuing their opinion and recommending the corrective measures to the Fund.

15.-(1) A Bidder may file an appeal against the resolution awarding the contract within five working days following the notice thereof. The appeal shall be settled by the Fund in accordance with the Public Procurement Act.

Appeal
process

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R.E. 2007

(2) Unless otherwise established in the conditions, the appeal shall be accompanied by a letter of guarantee issued by the bank in an amount equivalent to one percent of the total financing amount requested through the objected proposal.

(3) Where the remedy of appeal is dismissed or overruled, the bank guarantee shall be executed or the cheque cashed and the resulting amounts shall become a part of the funds of Universal Communications Service Access Fund.

(4) Where the appeal is admitted, the bank guarantee shall be returned to the appellant.

(5) Any appeal shall be settled within fifteen working days after the filing thereof, and the resolution shall be notified in writing to the bidders in their addresses stated in their proposals.

(6) An appeal may only be filed after the awarding resolution has been issued.

PART IV

IMPLEMENTATION OF UNIVERSAL SERVICE PROJECTS

Obligation
of
designated
universal
service
provider

16.-(1) A universal service provider shall comply with licence conditions issued by the Authority related to communication services to be provided in a universal service area.

(2) Subject to Regulation 9, a universal service provider shall comply with the approved universal service project.

(3) A universal service provider shall annually submit to the Fund progress reports not later than three months from the date of the written notification of the approval of the universal service plan.

(4) Any universal service provider who fails to comply with this regulation commits an offence under these Regulations.

Quality of
service
for
universal
service

17. A universal service provider shall be required to comply with quality of service requirements as specified in the Tanzania Communications (Quality of Service) Regulations and licences requirements issued by the Authority.

Emer-
gency
services
for
universal
service

18. Every universal service provider shall be required to ensure that users have access to free radio maritime emergency services and safety communications.

Public
payphone
service
for
universal
service

19.-(1) A universal service provider shall be required to provide emergency calls free of charge to users in their area of coverage.

(2) The Fund shall provide incentives to a universal service provider who installs payphones with special facilities for disabled users.

Advance
payment
to
designated
universal
service
provider

20.-(1) The Fund may make an advance payment to the designated universal service provider toward the capital cost of implementation of the universal service provision.

(2) The advance payment may be payable in installments upon agreement between the Fund and the universal service provider.

(3) Advance payment shall be made subject to Bank guarantee requirement.

21.-(1) A designated universal service provider may apply to the Fund to vary the approved universal service implementation plan.

Application for variation of an approved universal service plan

(2) The Fund may approve the variation plan with or without amendment or refuse to approve the variation plan.

(3) The Fund may, before giving decision, consult the designated universal service provider.

(4) Where the Fund approves the variation, the varied universal service implementation plan shall become the approved universal service plan from the date to be specified by the Fund.

22.-(1) The Fund may revoke an approved universal service plan in any of the following circumstances-

Revocation of designated universal service provider

- (a) the designated universal service provider has failed to comply with the approved universal service plan;
- (b) the designated universal service provider ceases to carry on its business; or
- (c) the revocation is in the public interest.

(2) Before revoking the designation of designated universal service provider the Fund shall notify the designated universal service provider in writing of its intention.

(3) The designated universal service provider shall respond within one month from the date of issuance of written notice and provide written reasons why the designation should not be revoked.

(4) The Fund shall consider the submission made by the designated universal service before revoking the designation.

(5) The Fund shall give decision in writing after considering reasons given by designated service provider.

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Mechanism of publishing performance of universal service providers

23.-(1) The universal service provider shall submit to the Fund annual reports as a basis of verifying and establishing performance of the project for publication.

- (2) The annual report shall constitute among others the following—
- (a) the overall sustainability and profitability of the project;
 - (b) the growth of number of users of communication services;
 - (c) the growth and increase in the number of people trained in the area of Information Communication Technology; and
 - (d) the social-economic impact of the project in the community.

Annual report and statement of accounts

24.-(1) The Fund shall prepare Accounting Manual and Financial Regulations for proper management of funds.

(2) The Fund shall collect all dues to the Fund promptly and follow-up regularly for recovery of outstanding debts.

(3) The Fund shall maintain proper accounts of the Fund and, as soon as practicable after the end of each financial year.

(4) The Fund shall cause to be prepared for the financial year an annual report and statement of accounts of the Fund which shall include—

- (i) balance sheet;
- (ii) income and Expenditure Account;
- (iii) statement of changes in equity;
- (iv) cash flows statement.

(5) The Fund shall cause the statement of accounts prepared to be audited by an independent auditor appointed by the Fund.

(6) The Fund shall monitor all universal provision activities under these regulations and report to the Minister at the end of each financial year.

(7) The Fund shall publish the annual report and statement of accounts in the manner it deems appropriate, as soon as practicable following the date on which the Fund conveys the report and statement of accounts to the Minister.

Tariffs

25.-(1) Tariffs shall be set taking into consideration variables that determine them on operation and maintenance costs, replacement costs, investments, market structure and taxes.

(2) Provisions of rural services may require different treatment e.g. higher retail prices or rural asymmetric interconnection charges to that of urban because of higher rural investments; operation and maintenance costs.

(3) Tariff schemes shall allow operators to recover—

- (a) their direct operational costs, provided these are the costs that would be incurred by an efficient operator in the circumstances; and
- (b) a reasonable risk-adjusted rate of return on the capital that they have contributed to the communications project or programme.

(4) The schemes shall be cost oriented, avoiding cross-subsidies and fostering demand.

(5) Tariff schemes shall include descriptions of the public available communication services offered, indicating what is included in the subscription charge and the period rental charges which include—

- (a) operator service;
- (b) directories;
- (c) directory enquiring services;
- (d) selective call barring, itemized billing; and
- (e) maintenance.

(6) Standard tariff schemes shall be published covering access, all types of usage charges, maintenances and including details of standard discounts applied and special and targeted tariffs.

26.-(1) The Fund shall maintain affordable price tariffs so as to monitor the evolution and level of retail tariffs of the services falling under the universal service obligations and provided by the designated undertakings, in particular in relation to national consumer prices and income.

Mecha-
nism to
maintain
affordability
of service

Universal Communications Service Access Fund Regulations

G. N. No. 109 (contd.)

(2) The Fund, in light of local conditions, may require that designated providers provide options or packages to consumers which depart from those provided under normal commercial conditions; in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the publicly available communication services.

(3) The Fund, besides any provisions for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, shall ensure that support is provided to consumers identified as having low incomes or special social needs.

(4) The Fund in liaison with the Authority shall ensure that, where a designated undertaking has an obligation to promote special tariff options, common tariffs, including geographical average or to comply with price caps, the conditions are fully transparent and published and applied in accordance within the principle of non discrimination, the Fund may require that specific scheme be modified or withdrawn.

(5) For the purpose of this regulation:

"affordable price tariff" means a tariff agreed between the service provider and the Fund in light of specific conditions and may involve setting common tariffs irrespective of the location or special tariff options to deal with the needs of low income users. Affordability for individual consumers is related to their ability to monitor and control their expenditure."

Dispute
resolution
mecha-
nism

27.-(1) The Fund shall ensure that transparent, simple and inexpensive out of court procedures are developed by universal service provider for dealing with unresolved disputes involving consumers.

(2) A Universal service provider shall submit to the Fund within a period of three months after being awarded universal service subsidy a copy of its consumer contracts.

PART V GENERAL PROVISIONS

Register
of
Universal
Service
provision

28.-(1) The Fund shall maintain a register of universal service provision which shall include the following—

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- (a) designated service providers;
- (b) a list of licensees contributing to the Fund;
- (c) a list of information required by the Fund when determining designated universal service providers; and
- (d) Any person may inspect the register and make a copy of or take extracts from the register upon making payment of ten thousand shillings to the Fund.

29. Any person who commits an offence under these Regulations shall on conviction be liable to a fine not exceeding five million shillings.

General
penalty

Dar es Salaam,
27th April, 2009

PETER M. MSOLLA (MP.),
*Minister for Communications,
Science and Technology*