

PRESIDENTIAL ORDER N° 05/01 OF 15/03/2004 DETERMINING THE FUNCTIONING OF THE UNIVERSAL ACCESS FUND AND PUBLIC OPERATOR'S CONTRIBUTIONS

We, KAGAME Paul,

President of the Republic,

Given the Constitution of the Republic of Rwanda of 4 June 2003, as amended to date, especially in its Articles 112 paragraph One and 121 paragraph One;

Given Law n° 44/2001 of 30 November 2001 governing Telecommunications, especially in its Article 28;

Given Law n° 39/2001 of 13 September 2001 establishing an Agency for the Regulation of certain public utilities, especially in its Article One;

Upon the proposal by the Minister of Infrastructure;

After consideration and approval by Cabinet, meeting in its session of 28 January 2004.

HAVE ORDERED AND HEREBY ORDER:

CHAPTER ONE: GENERAL PROVISIONS

Article One: Definitions

In this Order, the terms referred to below shall have the following meanings:

Regulatory Agency	The Agency for the Regulation of certain public utilities established by Law n°39/2001.
Turnover	The amount of the operating revenues of the concerned Public Operator, after deduction of VAT and the sums paid to other Public Operators pursuant to their interconnection services.
Board	The Regulatory Board of the Regulatory Agency.
Fund	The Universal Access Fund established by Article 28 of Law n° 44/2001.
Law n° 39/2001	Law n° 39/2001 of 13 September 2001 establishing the Agency for the Regulation of certain public utilities.
Law n° 44/2001	Law n° 44/2001 of 30 November 2001 governing Telecommunications
Minister	Minister in charge of telecommunications.
Public Operator	A private person or organization which operates a Public Network.
Republic	The Republic of Rwanda.
Public Network	A telecommunications network open to the public. -
Non-Public Network	A telecommunications network not open to the public.

In respect of other terms, and except where provided otherwise herein, the definitions set forth in Law n° 39/2001 and Law n° 44/2001 shall, where applicable, apply to this Order.

Article 2 : Aim

The purpose of this Order is to define the functioning of the Fund and the contributions to be made to the Fund by Public Operators.

Article 3 : Nature of universal access –

Universal access to telecommunications services shall mean, in accordance with Articles One paragraph 31° and 28 of Law n° 44/2001, the widest possible access, on affordable terms and with minimum subsidy, to a public telephone service, by the general public in all parts of the Republic.

In particular, the provision of universal telecommunications access shall consist in:

- Supplying to any person who so requests a connection to a Public Network, in the serviced zone, at an objectively justifiable price;
- Providing in each large City, Municipality and city as per the meaning of Article 3 of Law n° 5/2001 of 18 January 2001 on the organisation and functioning of Urban Constituencies in Rwanda, within a radius of 2 km maximum, at least one public access point, in accordance with this Order and with applicable license terms and conditions;
- Providing in each District and trading centre as per the meaning of Article 3 of Law n° 5/2001 of 18 January 2001 on the organization and functioning of urban constituencies in Rwanda, at least one public access point, in accordance with this Order and with applicable license terms and conditions, as well as the possibility of servicing the public and health services in the area
- Ensuring free carnage for calls to emergency public services (police, fire service, emergency medical service...);
- Complying with quality standards set at national and international levels for the provision of the telephone service;
- Furthering any initiative aiming at facilitating access to information technologies especially in schools, hospitals and other public services.

Article 4: Role of the board in universal access

The Board shall ensure the establishment of universal access throughout the entire national territory, within time periods compatible with the financial means that can be mobilised for this purpose.

The Board shall, after consultation with the competent ministers, define the emergency public services concerned by Article 3 of this Order.

The minimum service quality standards referred to in Article 3 of this Order shall be set and regularly adapted by the Board. By so doing, the Board shall take into account, amongst other things, the recommendations of the standardization organs of the International Union of Telecommunications, as well as special constraints in the Republic and the situation of existing Public Networks.

CHAPTER II: FUND FUNCTIONING

SECTION ONE: ADMINISTRATIVE AND FINANCIAL MANAGEMENT

Article 5: fund administration

The Board shall administer the resources and expenses of the Fund in a manner entirely separate from the resources and expenses related to its other activities, including regulation and frequency management.

In particular, the Board shall open specific bank accounts for holding Fund resources, and keep books independently of Fund operations by clearly indicating the nature and amount of the resources, expenses, debts, credits and liquid assets. Fund surpluses at the end of a given year shall be carried forward to the following year.

The Chairman of the Board shall be the person authorized to control expenses and revenues of the Fund. The Agency's accountant shall be the accountant of the Fund.

In accordance with the legislation in force, the Fund shall be subject to financial audit by the Auditor General.

Article 6: Payment of evaluation cost

The Fund shall bear, its liquid assets permitting, the costs incurred by the Board for the examination and selection of the Public Operators to undertake any new service provision, as well as the financial

resources necessary to allow the provision of such services. The amount of contributions to the Fund shall be determined by application of the provisions of this Order.

Article 7: Accounting

The Board shall prepare detailed annual financial statements for the Fund to be submitted to the Minister no later than four (4) months after the closure of the Regulation Agency's financial year. The Minister shall name a qualified statutory auditor independent of the Board who shall verify the accuracy of the accounts described and their compliance with the provisions of this Order, as well as with accounting standards in force in the Republic.

Article 8: Activity report

The Board shall publish, each year no later than the 30 of April, an annual activity report for the Fund for the preceding financial year. This report shall describe the projects financed by the Fund and present the accounting of the Fund for the preceding financial year.

SECTION 2: IDENTIFICATION OF COMMUNICATION NEEDS

Article 9: List of Districts and Sectors in urban constituencies

The Board shall draw up and keep up-to-date an exhaustive list of districts and sectors in 'Large Cities', Municipalities and Cities in the Republic, and file them according to the following criteria:

- (j) access to telecommunications services provided in the whole territory concerned;
- (ii) access to telecommunications services provided in only one portion of the territory concerned;
- (iii) service available in manual mode only;
- (iv) service limited to the provision of points of access;
- (v) no service available.

The Board shall indicate, in respect of each District or Sector, the population as it was noted in the most recent census, as well as evaluating the population enjoying service from a network and the population using only public points of access.

Article 10: Service request and participation proposal

The Districts and Sectors, or groupings thereof, wishing to be provided with a telephony service, may send a request to the Board, asking that the necessary work be scheduled. The request shall indicate, where appropriate, the financial or other contributions that the District (s) or Sector(s) are committed to make with a view to the realisation of the service provision.

The Board shall annotate the list of Districts and Sectors drawn up pursuant to Article 9 above so as to indicate therein the contribution requests and participation proposals of Districts and Sectors as well as an assessment of their contributions.

Article 11: Annual update of unserved zones

The Board shall communicate to the Minister, no later than the 28th of February of each year, the list of districts and sectors which do not yet enjoy, totally or partially, universal access. Such a list, which shall include the information and annotations referred to above, shall be used as the basis for the planning of activities for the following year.

SECTION 3: TECHNICAL AND ECONOMIC ASSESSMENT

Article 12: Comparative study

The Board shall carry out or commission, on a regular basis, a comparative study of pilot projects representing various situations, on the basis of several parameters, including population density, the nature of economic activities and distance from the national network.

Such study shall be used to compare investment and operating costs of the new service provision, in these different situations, taking account of possible technological options. Public Operators shall be obliged to communicate to the Board any information it considers necessary, indicating, where appropriate, which information is of a confidential nature and therefore should not be published. These studies shall be paid for by the Fund or any other available source of funding.

Article 13: Study contents

The comparative study referred to in Article 12 of this Order shall present, for each type of service provision: (j) an evaluation of the volume and nature of demand (public access points, administrative, professional and residential connections, etc.), (ii) an evaluation of the most affordable technologies, and (iii) a framework for investment and operation costs, and financial forecasts for a period of at least three (3) years taking into account the capital remuneration rates in force at the time of the study.

Besides, the study shall include evaluations of the cost price, in the different situations, of service provision limited to public access points.

Article 14: Areas still to be serviced

The Board shall divide the areas still to be serviced into categories according to the characteristics pointed out by the comparative study. The results shall be appended to the list of districts not yet serviced, which shall be sent to the Minister.

Article 15: Confidentiality

All Board studies concerning universal access shall remain confidential and not be available for consultation except by Boards and Ministry's authorised staff. Any disclosure of such information to an unauthorised third party shall lead to criminal prosecution initiated by the Minister or the Board.

SECTION 4: PLANNING

Article 16: Service provision extension programme

On the basis of the information pursuant to Sections 2 and 3 of this Chapter, the Board shall annually define, no later than the 30th of June, where appropriate in accordance with the guidelines set forth by Cabinet where these have been communicated to the Board before the 30th April of that year, a service provision extension programme for the following calendar year, taking into account the following factors:

(a) the imperatives of a multi-sector implementation of the universal access and rural opening policy. The choice of the service provision programme for telecommunications shall be made taking into consideration, in particular, the plans for connection to electricity and clean water distribution networks, as well as for road network projects;

(b) service provision which appears to be cost-effective, in the light of the studies, shall be automatically included in the programme. Such provision shall not be taken into account for the Fund appropriation forecasts;

(c) other service provision shall be listed in accordance with available or foreseeable resources of the Fund, priority being given to provision requiring the lowest subsidies;

(d) the selection of areas to be serviced listed in the programme shall be made by giving priority to those for which the foreseeable net cost for the Fund (i.e. excluding possible supplementary support) is the lowest, in order to optimise the impact of the Fund. Where it becomes necessary to choose between several areas with equal foreseeable costs, priority shall be given to new provision options which, in coordination with the policies applicable to clean water and electricity distribution networks, have the effect of reducing the equipment differential across the various areas of the country.

Article 17: Schedule

The programme implementation schedule shall be revised every year in order to take account of the progress made.

Article 18: Annual report

The Board shall be responsible for the technical organisation and follow-up of programme implementation. It shall publish an annual progress report detailing its activities in this regard.

SECTION 5: TENDER AWARDING FOR AREAS TO BE SERVICED WITHIN THE FRAMEWORK OF UNIVERSAL ACCESS

Article 19: Tender document

The Board shall, each year, no later than the 1st of September, prepare and forward to the Public Operators who may have requested to receive it, a tender document including, for each new service provision or group of service provisions to be undertaken in the following year with respect to the programme referred to above, the specifications with technical characteristics of the telecommunications networks and/or services to be supplied and, in particular, the service quality indicators to be respected.

The Board shall forward a copy of the tender document to the Minister, for information.

Article 20: Tender awarding

New universal access service provision shall be awarded by auction within the context of a transparent process based on competition between interested Public Operators and, as a priority to operators whose business is only confined to rural areas. The Board shall be responsible for the implementation of this process.

SECTION 6: SUBSIDY PAYMENTS

Article 21: Payment conditions

Where an authorisation for installation and operation is accompanied with a grant, the latter shall only be paid once the following conditions have been met:

- (a) construction and putting into service by the authorisation holder, in accordance with specifications, of the initial infrastructure provided for in its programme, and a presentation of evidence for expenses incurred (agreements, supplier invoices etc.);
- (b) putting into service of interconnection with at least one Public Operator;
- (c) verification that the service is available, in particular that internal, national and international calls can be carried in accordance with the standards in force, from or to the network in question;
- (d) presentation by the authorisation holder of a subsidy payment request.

Article 22: Payment deadlines

The Board shall verify that the conditions referred to above are met and in such a case, shall pay the subsidy within a maximum period of 30 calendar days from the date on which the payment request was received. The subsidy shall be paid from the Fund and from any external possible support.

SECTION 7: PUBLIC OPERA TOPS' OBLIGATIONS AND BREACHES

Article 23: Follow-up of public operators

The Board shall make sure that Public Operators responsible for new service provisions comply with the provisions of their terms of reference.

Article 24: Public operator obligations

As is the case for other licensed operators, Public Operators responsible for new service provisions shall be obliged to pay fees, charges and dues set by legislative and regulatory texts in force.

Public Operators shall not, without the prior authorisation of the Board, remove, sell, lease, encumber or assign in any manner the installations and equipment necessary for the technical and commercial operation of those of their networks contributing to universal telecommunications access. However, this provision shall not apply where an item of equipment is replaced with another item of equipment performing equivalent or more extensive functions.

Article 25: Public operator breaches

In the event of breach by an Operator of its obligations, the Board shall apply the penalties set forth by the texts in force.

Where an authorisation holder abandons its service during the term of such authorisation, and where the authorisation holder has received subsidies for the implementation of his network, such a Public Operator shall, without prejudice to any applicable penalties, be obliged to reimburse to the Fund a portion of the subsidies received in proportion to the duration of the license still remaining. Such reimbursement shall be posted as a Fund resource.

Article 26: Preventative Measures

The Board shall be entitled to take the following preventative measures where the behaviour of an Operator jeopardises the continuity of universal telecommunications access on a long term basis:

- (a) take any measure to guarantee the integrity and maintenance of installations and equipment contributing to universal telecommunications access. To this end, the Board shall be entitled to request assistance from the Police;
- (b) withdraw the authorisation and grant it to another Public Operator in the event of cessation or long-term inability to provide the service by the authorisation holder.

Article 27: Non-renewal of authorisation

Where an authorisation is not renewed, the Board shall, in collaboration with competent local leaders, organise a consultation for the selection of a new Public Operator, in accordance with the provisions of this Order.

This consultation shall be launched at least three (3) months before the authorisation expires. The Board shall decide, depending on the state of the network, whether the new Public Operator shall be bound to acquire the existing equipment. In such a case, the purchase price shall be determined by agreement between the former and the new Public Operator or, failing agreement, by an independent expert appointed by the Board.

Article 28: Fines penalties

Except where expressly stated otherwise, the penalties set forth in Law n° 44/2001 shall be applicable pursuant to this Order.

Where Public Operators fail to abide by obligations, partial or total reimbursement of the subsidies paid shall be determined by the Board, without prejudice to any other penalties set forth in applicable regulations. Modalities for paying the subsidies back to the Fund shall be set forth in specifications of Public Operators recipient of such subsidies. Board decisions in relation to subsidy reimbursement shall be taken in accordance with the terms of reference of the concerned Public Operator. The proceeds of penalties and fines paid following sanctions pronounced by the Board and the courts shall be paid to the Board and posted as resources of the Fund. Without prejudice to this provision, the subsidies granted by bodies other than the Board and reimbursed by Public Operators, following a decision of the Board, shall be returned to such bodies upon their request.

CHAPTER III: FUND'S RESOURCES

Article 29: Public operator's contributions

In accordance with Article 28 of Law n° 44/2001, the Fund shall, without excluding other contributions, be financed with contributions made by Public Operators, who shall pay an annual amount of money equivalent to a percentage of their Turnover.

Article 30: Contribution Level

The contribution level for each Public Operator for each calendar year shall be set by the Board no later than the 31st of January of each year. However, where there is no express Board decision, the level applying at that time shall be automatically renewed.

Such a contribution level may not exceed two and a half percent (2,5%) of the Turnover of the concerned Public Operator, generated by the running of the telecommunications networks or services open to the public.

Such payments shall be due each year one month after the end of the financial year on the basis of the Turnover generated during the previous year.

Article 31: public operator's accounting

In order to facilitate the calculation and monitoring of their contribution, Public Operators shall keep separate within their general and business accounts all accounting operations, including invoicing and monies banked, relating to telecommunications services subject to contribution.

Article 32: Collection

The contribution from Public Operators shall be collected by the Board according to collection modalities which it shall work out and publish in the Official Gazette.

CHAPTER IV: PROVISIONAL AND FINAL PROVISIONS

Article 33: Provisional provisions

By the time this order comes into force, operators currently doing business shall pay amount of fees provided for article 30, on the basis of their turnover achieved during 2003 financial year.

The Board shall determine the rate of fees to be paid not later than March 31st 2004.

Article 34: Abrogation of previous and contrary provisions

All prior provisions contrary to this Order are hereby abrogated.

Article 35: Entry into force

This Order shall come into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

Done at Kigali, on 15/03/2004

The President of the Republic
KAGAME Paul
(sé)

The Prime Minister
MAKUZA Bernard
(sé)

The Minister of Finance and Economic Planning
Dr. KABERUKA Donald
(sé)

The Minister of Infrastructure
Dr. NTAWUKULIRYAYO Jean Damascène
(sé)

Seen and sealed with the Seal of the Republic:

The Minister of Justice
MUKABAGWIZA Edda
(sé)