



Working Document:

Review of Universal Access and Service Regulations

Barbados

Comparative Matrix

November 2011

HIPCAR

Harmonization of ICT Policies,
Legislation and Regulatory
Procedures in the Caribbean



This document has been produced with the financial assistance of the European Union. The views expressed herein do not necessarily reflect the views of the European Union.

The designations employed and the presentation of material, including maps, do not imply the expression of any opinion whatsoever on the part of ITU concerning the legal status of any country, territory, city or area, or concerning the delimitations of its frontiers or boundaries. The mention of specific companies or of certain products does not imply that they are endorsed or recommended by ITU in preference to others of a similar nature that are not mentioned. This report has not been through editorial revision.

The copyrights for all documents produced under the consultants' assignments shall be jointly vested with ITU and the Government of Barbados.

 **Please consider the environment before printing this report.**

ITU 2011

All rights reserved. No part of this publication may be reproduced, by any means whatsoever, without the prior written permission of ITU.

Acknowledgements

The present document has been prepared in connection with regional activities carried out under the HIPCAR project “Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”.

The HIPCAR project¹ has prepared regional Model Legislative Texts and Model Policy Guidelines for the Caribbean during Stage 1 of its implementation, having focused on (1) Information Society Issues concerning e-Commerce (Transactions); e-Commerce (Evidence); Privacy and Data Protection; Interception of Communications; Cybercrimes / e-Crimes; and Access to Public Information (Freedom of Information) as well as on (2) Telecommunications matters such as Universal Access/Service; Interconnection and Access; and Licensing. In its current Stage 2, HIPCAR is offering in-country assistance upon request of the beneficiary countries to transpose these models into national policies and legislation.

The Government of Barbados has officially requested the project’s support in such connection, in all of the above areas. The current assignment deals with three of these areas, namely Universal Access and Service, Interconnection, and Licensing.

Activities for the Government of Barbados were spearheaded by the Telecommunications Unit at the Prime Minister’s Office and jointly implemented with the International Telecommunication Union (ITU).

The HIPCAR Steering Committee – chaired by the Caribbean Telecommunications Union (CTU) – provided guidance and support to Ms. Sofie Maddens-Toscano in preparing the first draft documents, based on the relevant background documentation identified, taking account of the relevant HIPCAR Model texts and the national requirements of the beneficiary country. These documents were reviewed, discussed and adopted by broad consensus by participants at national stakeholder consultation meetings on Interconnection, Licensing, and Universal Access/Service held in Barbados, 8 – 10 November, 2011.

Production of this document was carried out under the direction of the HIPCAR Project Coordinator, Ms. Kerstin Ludwig. Support was provided by the Project Manager of the ITU-EC project, Mr. Sandro Bazzanella, the HIPCAR Project Assistant, Ms. Tracy Johnson, and the ITU Area Representative, Mr. Cleveland Thomas. The document has further benefited from comments of the ITU Telecommunication Development Bureau’s Regulatory and Market Environment Division, and the team at ITU’s Publication Composition Service was responsible for its final publication.

¹ The full title of the HIPCAR Project is: “Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”. HIPCAR is part of a global ITU-EC-ACP project carried out with funding from the European Union set at EUR 8 million and a complement of USD 500,000 by the International Telecommunication Union (ITU). HIPCAR is implemented by the ITU in collaboration with the Caribbean Telecommunications Union (CTU) and with the involvement of other organizations in the region (see www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/index.html).

Contents

Acknowledgements iii

Comparative Matrix: Universal Access and Service..... **Error! Bookmark not defined.**

Deleted: 5

ITU-EC HIPCAR Project
 Implementation of Model Regulations in Barbados: Access and Interconnection

Following is the colour legend for the comparative law analysis shown in the following pages. The law analysis compares the HIPCAR Model Regulation on Universal Access and Service with the Barbados Telecommunications Act and the Telecommunications (Universal Service) Regulations, 2003 and makes recommendations on how to adapt the Telecommunications (Universal Service) Regulations, 2003 to incorporate the provisions of the HIPCAR Model. Other relevant adopted texts such as the HIPCAR Policy Guidelines are referenced in the other relevant texts and comments sections where these are relevant as background information for the drafting instructions. The instructions are reflected in the Recommendation and Draft Legislation sections and have been incorporated into a proposal for modifications to the Telecommunications (Universal Service) Regulations, 2003.

HIPCAR Model Universal Access and Service Regulations	
Telecommunications Act CAP 282B	Barbados Telecommunications Universal Service Regulations 2003
Comments:	
Recommendation and draft legislation	
HIPCAR Policy Guidelines on Universal Access and Service	

1. Short Title	
These Regulations may be cited as the "Universal Access and Service (UAS) Regulations", and shall come into force and effect [on xxx/ following publication in the Gazette].	
n/a	These Regulations may be cited as the <i>Telecommunications (Universal Service) Regulations, 2003</i>
Comments:	
Recommendation and draft legislation: MOD to reflect update	
2. Objective	
The objective of a universal access or service policy in [insert name of country] shall be the expansion of the public information and communications networks (including access to basic and advanced information and communications services) in [the country] to ensure universal availability and affordability of those services on an equitable basis to all end-users, regardless of where they live or work.	
32. The universal service policy of the Government of Barbados is aimed at ensuring that every resident and every business enterprise of Barbados has access to reliable, affordable telecommunications services throughout Barbados on an equitable basis.	n/a
Comments: this section sets forth the objective of the legislation and as such provides a clear introduction to the Regulation.	
Recommendation and draft legislation: Consolidate text of HIPCAR Section 2 with Regulation.	
3. Definitions	
The following words and phrases shall have the meanings assigned thereto hereunder, unless the context indicates otherwise. Any words and	

phrases not defined hereunder shall have the meanings ascribed thereto in the Law and the related rules and regulations issued pursuant thereto:

- a. Authorisation: administrative act (individual license, or class license) which grants a set of rights and obligations to an entity and grants the entity the right to establish and exploit information and communication networks or offer information and communication services.
- b. Community Access Centres: centres located in areas identified by the National Regulatory Authority (NRA) which provides members of such areas with a point of access to basic information and communications services and technologies.
- c. Competitive minimum subsidy auction means the competitive bidding process in which the NRA evaluates the bids submitted by concessionaires under regulation 11(1) based on the criteria identified by the Authority as necessary for the successful implementation of the universality initiative and on the extent to which the cost of implementation requires funding from the Universality Fund. The concessionaire who requires the least funding from the Universality Fund and who meets the criteria identified by the Authority shall be successful.
- d. Days: For the avoidance of doubt (and without limiting any other law relating to interpretation), in these UAS Regulations, the term "days" means calendar days.
- e. Disability: means any restriction or lack of ability (resulting from an impairment) to perform an activity in the manner or within the range considered normal for a human being.
- f. Information and communications means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct.
- g. Information and communications network means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electro-magnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.
- h. Information and communications operator means an entity which owns, operates or provides an information and communications system.
- i. Information and communications service means a service normally provided for remuneration which consists of the conveyance of signals on information and communications networks, including information and communications services and transmission services in networks used for broadcasting as well as services providing or exercising editorial control over content transmitted using Information and Communications networks.
- j. Information and communications service provider means an entity providing an information and communications service as described in these Regulations to users.
- k. National Regulatory Authority or NRA means the body or bodies assigned responsibility for the [licensing/authorisation and] regulation of information and communications services, networks, associated facilities and associated services including any agency established for

Formatted: Bullets and Numbering

<p>the oversight of universal service and or disbursement of universal service funds.</p> <p><u>l.</u> Network facilities: any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of information and communications services, but does not include equipment belonging to an end customer.</p> <p><u>m.</u> Population groups within the access gap: means such persons or population groups as may be identified by the Authority from time to time for whom it has been geographically and economically challenging to access information and communications networks.</p> <p><u>n.</u> Universal Service Target means an underserved area and/or an underserved group within the community.</p> <p><u>o.</u> Scarce Resources Authorisation: Authorisation given by an administration for the use of numbers or which allows radio communication systems to use a specific radio frequency or radio frequency channels under specified conditions.</p> <p><u>p.</u> Universal access (UA): means every individual has access to information and communications services at a public place. This is also called public, community or shared access.</p> <p><u>q.</u> Universal service (US): every individual or household has private access to information and communications services via wireline or wireless devices.</p> <p><u>r.</u> Universal service obligations: requirements that governments place on operators to offer information and communications services in all areas, regardless of economic feasibility.</p>	
<p>2. In this Act,</p> <p>"affiliate", in relation to a company, means an affiliated body orporate within the meaning of section 440 of the Companies Act;</p> <p>"broadcasting" means the one-way transmission of sound images or other programming to the general public on any basis, and whether delivered by radio waves, cable, terrestrial or satellite means, or by other electronic delivery;</p> <p>"bypass" means</p> <p>(a) the passing of international voice service, including the carriage of reconstructable voice channel within a data or mixed voice or data service, without passing through the international gateway switch of a licensed voice network operator; or</p> <p>(b) the termination of international voice services over the domestic switched telecommunications network by a person who does not originate the call or possess a valid interconnection agreement with that domestic network operator with respect to international voice services;</p> <p>"Cable & Wireless BARTEL Limited" means a company incorporated as such under the Companies Act;</p> <p>"Cable & Wireless BET Limited" means a company incorporated as</p>	<p>2. In these Regulations,</p> <p>"administrative levy" means the levy established under regulation 10;</p> <p>"auditor" has the meaning assigned to it by section 2 of the <i>Insurance Act</i>;</p> <p>"eligible revenue" means revenue received by each licensee in Barbados for the provision of licensed services less any outpayment made for providing those services;</p> <p>"financial year" means the financial year of the universal service carrier;</p> <p>"Fund" means the Universal Service Fund established under section 36 of the Act;</p> <p>"Fund Administrator" means the Administrator appointed by the Minister to manage the Universal Service Fund under regulation 9;</p> <p>"Fund Levy" means the contribution of licensees to the Fund under regulation 16;</p> <p>"licensees" means carriers and service providers licensed under the Act;</p> <p>"plan" means the universal service plan agreed between the Minister and the universal service provider in accordance with regulation 5;</p>

<p>such under the Companies Act; "Cable & Wireless Caribbean Cellular (Barbados) Limited" means a company incorporated as such under the Companies Act; "carrier" means a person who has been granted a licence by the Minister pursuant to this Act to own and operate a public telecommunications network; "Chief Telecommunications Officer" means a public officer appointed as such under the Civil Establishment Act; "Commission" means the Fair Trading Commission established under the Fair Trading Commission Act; "Convention" means the International Telecommunication Convention adopted in Nairobi in November 1982 to which Barbados is a party; "Court" means the High Court; "customer equipment" means (a) telecommunications equipment whether fixed or mobile; and (b) inside wiring located at the premises of a customer and connected to a public telecommunications network at the network termination point; "document" has the meaning assigned to it by section 2 of the Evidence Act; "domestic telecommunications service" means a telecommunications service that is provided between one or more points in Barbados but excludes a transit service or a mobile telecommunications service; "emergency numbers" means numbers assigned to the police, fire, ambulance or other like services for use by the public in reaching those services in an emergency; "existing carrier" means in respect of domestic telecommunications, Cable & Wireless BARTEL Limited, in respect of international telecommunications, Cable & Wireless BET Limited, and in respect of mobile telecommunications, Cable & Wireless Caribbean Cellular (Barbados) Limited; "existing service provider" means (a) Cable & Wireless BARTEL Limited; (b) Cable & Wireless BET Limited; (c) Cable & Wireless Caribbean Cellular (Barbados) Limited; and</p>	
---	--

ITU-EC HPCAR Project
Implementation of Model Regulations in Barbados: Access and Interconnection

<p>(d) any other existing service provider that has registered with the Ministry prior to 30th September, 2002;</p> <p>"facility" means any physical component of a telecommunications network including wires, lines, poles, ducts, towers, satellite earth stations or any other apparatus using the radio spectrum, submarine cables, and other tangible resources used for the provision of a telecommunications service, but does not include customer equipment;</p> <p>"former Act" means the Telecommunications Act, 1991;</p> <p>"frequency band" means a continuous frequency range of electromagnetic spectrum;</p> <p>"harmful interference" means any form of emission, radiation induction or other electromagnetic effect that endangers the functioning of a radio navigation service or other safety service, or seriously degrades, obstructs or repeatedly interrupts any telecommunication or radio communication service operated in accordance with the provisions of this Act;</p> <p>"interconnection" means the linking of public telecommunications networks to allow users of one licensed carrier to communicate with users of another licensed carrier;</p> <p>"interconnection provider" means a carrier that provides an interconnection service;</p> <p>"interconnection service" means a service provided as part of the obligation to provide interconnection under Part VI;</p> <p>"international telecommunications service" means a telecommunications service that is provided from points in Barbados to points outside of Barbados and from points outside of Barbados to points in Barbados, or is passing in transit through Barbados and from or to ships at sea and small vessels in coastal waters but excludes a mobile telecommunications service;</p> <p>"licence" means a licence referred to in this Act;</p> <p>"licensee" means a person who is the holder of a valid licence granted under this Act;</p> <p>"mobile telecommunications network" means a telecommunications</p>	
---	--

network used for the provision of mobile telecommunications services that

(a) permits a user to have access to the services irrespective of the location of the user via different mobile base facilities during the provision of a single call known as an "inter-cell hand-over"; and

(b) does not require physical contact between the network and the customer equipment;

"mobile telecommunications service" means a telecommunications service consisting of the emitting, transmitting, switching, conveying or receiving of messages within, into or from Barbados by means of a mobile telecommunications network;

"network termination point" means the point of connection forming part of a telecommunications network designated by a carrier for connection by a customer of customer equipment to that carrier's network;

"person" includes an individual, a partnership, an unincorporated organisation, a Government or Government agency;

"prescribed fee" means such fee as the Minister responsible for Finance prescribes by order;

"private telecommunications network" means a telecommunications network that is

(a) used solely by a person or group of affiliated persons for purposes other than the provision of telecommunications services;

(b) is not interconnected with a public telecommunications network; and

(c) except with respect to use of the electromagnetic spectrum, does not cross public rights of way;

"private telecommunications service" means a telecommunications service used solely by a person or group of affiliated persons, using a private telecommunications network;

"public telecommunications network" means a public switched telecommunications network owned and operated by a carrier for the provision of telecommunications services to the public;

"radiocommunications" means telecommunication by radio waves;

ITU-EC HIPCAR Project
Implementation of Model Regulations in Barbados: Access and Interconnection

"radiocommunications apparatus" or "radio apparatus" means any apparatus designed or adapted for use in transmitting or receiving radiocommunications including apparatus in a vehicle, vessel, aircraft or on board a satellite, buoy or beacon;

"radiocommunications service" means a service performed and the facilities provided in connection with the transmission and reception of radiocommunications;

"radiocommunications station" or "radio station" means one or more radio transmitters or receivers or a combination of such transmitters and receivers including the accessory equipment necessary at one location for carrying on a radiocommunications service;

"radio navigation service" means a service for determining the position, velocity or other characteristics of a vessel or the obtaining of information relating to the position, velocity or other characteristics of the vessel by means of the propagation properties of radio waves;

"Reference Interconnection Offer" or "RIO" has the meaning set out in section 26;

"resale" means an activity whereby a person subscribes to, or contracts with, a licensed carrier or service provider for the use of specified services of that licensed carrier or service provider and then re-offers those services to any person;

"satellite receiver" means an apparatus adapted for the reception only of sound and images from a radiocommunications service and transmitted by means of a satellite;

"service provider" means a person granted a licence by the Minister pursuant to this Act to provide telecommunications services to the public;

"spectrum" means electromagnetic spectrum;

"Spectrum Plan" means the National Spectrum Management Plan referred to in Part IX;

"technician" means a person who is certified in accordance with this Act to connect customer equipment to the public telecommunications network or to install, maintain and repair wiring on the customer's side of the network termination point;

"telecommunications" means any form of transmission, emission or reception of signs, text, images, sounds or other intelligence of any nature by guided or unguided electromagnetic, electrochemical or other forms of energy including by wire, radio, optical, electromagnetic spectrum or by way of any other technology, whether as between persons and persons, things and things, or persons and things;
"telecommunications apparatus" means any apparatus used for the transmission or reception of telecommunications;
"telecommunications network" means any wire, radio, optical or other electromagnetic network used to route, switch, or transmit telecommunications;
"telecommunications service" means a service that comprises the emitting, transmitting, switching, conveying or receiving of messages within, into or from Barbados by means of a telecommunications network;
"transit service" means a service provided to or by any international carrier which facilitates the passing of traffic through telecommunications facilities of licensed carriers where that traffic does not terminate in Barbados;
"universal service carrier" means a carrier in relation to which a declaration is in force with respect to the universal service obligation pursuant to Part VII;
"universal service obligation" means the obligation set out in section 33;
"VSAT" means very small aperture terminal satellite facility.

Comments: need to complete definitions to take account of provisions in Regulation

Recommendation and draft legislation: consolidate definitions

4. Universal Service Principles

The following principles shall guide the Minister in establishing policies for the preservation and advancement of universal access and service:

- a. Quality information and communications services should be available at equitable, reasonable, and affordable rates.
- b. Consumers in all regions, including low-income consumers and those in rural, insular and high cost areas, should have access to information and communications services that are reasonably comparable to those services provided in urban areas in [the country] and that are available at rates that are reasonably comparable to rates charged for similar services in such urban areas.
- c. All providers of information and communications services should make an equitable and non-discriminatory contribution to the

Formatted: Bullets and Numbering

- preservation and advancement of universal service.
- d. There should be specific, predictable and sufficient legal and regulatory mechanisms to preserve and advance universal service that minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, while safeguarding the public interest.
- e. In cases such as those referred to in (d) above, to safeguard the role of competitive markets with respect to fostering continued economic growth, exit strategies that can ultimately restore effective competition in areas where distortion has occurred should be included as part of the overall measures and an action plan formed for delivering this particular UAS program
- f. Multiple methods of achieving universal access and service should be implemented, including coverage and build-out obligations in licences, in addition to universal service obligations.
- g. There should be access to information and communications services for people with disabilities or special needs, population groups within the access gap, educational institutions, health care, community access centres and libraries.
- h. Such other principles as are consistent with this Regulation and that the Minister determines are necessary and appropriate for the protection of the public interest, convenience and necessity.

n/a | n/a

Comments: As stated in the HIPCAR Assessment Report on UAS, the definition of universal access and service and the scope of the obligations attached to the respective definitions will differ from one country to the next, depending on the economic and social context and the political will to achieve universal access and service in terms of communications. Examples show that universal access and service measures are generally aimed at providing service to rural areas that are either unserved or underserved, as well as at low-population density areas where provision of services is not commercially attractive or even viable. Increasingly, countries are also looking at other areas, including very poor urban areas in large metropolitan cities, including slums. At present, however, technological change is challenging existing policies and forcing regulatory authorities to rethink the universal service obligations they impose on their carriers and establish a framework that will enable the government to carry out their universal service and access policies in a converging telecommunications sector and to revise it as per the market realities.

Recommendation and draft legislation: ADD Section 4 of HIPCAR.

5. UAS Policy Development

- The Minister, after consultation with the NRA, shall:
- a. Determine to which public information and communications services the requirement of universal service shall apply, taking into account the needs of the public, affordability of the service and advances in technologies.
 - b. Use a multi-pronged approach to addressing universal access/service challenges and opportunities, relying on complementary strategies, including public private partnerships and community access centres to meet the targets that have been set.
 - c. Collaborate with other Ministries and government agencies to foster the development of a comprehensive UAS policy that aligns with the national ICT strategy.
 - d. Establish a fair and transparent information and communications regulatory framework that promotes widespread access to ICTs while allowing the market to address universal access/service to the greatest extent possible, intervening only where the market has failed or

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

seems likely to do so. This entails:

- i. Designing universal access/service policies, regulations and practices to create incentives for the private sector to extend universal access to information and communications services;
- ii. Identifying population groups within the access gap;
- iii. Setting out a framework that facilitates UAS providers in obtaining the requisite requirements for necessary approvals such as rights of way, environmental approvals or other authorisations;
- iv. Promoting technologically neutral licensing practices enabling service providers to use the most cost-effective technology to provide services for end users;
- v. Adopting a transparent and non-discriminatory interconnection framework in which interconnection rates are linked to costs;
- vi. Reducing regulatory burdens to lower the costs of providing services to end users;
- vii. Promoting competition in the provision of a full range of information and communications services to increase access, affordability, availability and use of ICTs.

Formatted: Bullets and Numbering

n/a

n/a

Comment: As stated in the HIPCAR UAS Assessment Report, since markets have been opened to competition, policy makers and regulators have been using a variety of tools to achieve universal access and service. Good practice is that, before using scarce public resources, governments and regulators exhaust available non-investment avenues to extend access. Regulatory reform is one of the first steps in achieving universal access and service. In addition to market liberalisation combined with regulatory initiatives including universal access obligations and special regulations and conditions which favor projects and operations in high-cost or low-income areas, complementary strategies can be applied to ensure that objectives and targets are met through a mix of tools.

The Assessment Report also provides that achieving universal access and service to communications is a challenge for all countries. In order to ensure that universal access and service policy is a central part of the ICT framework and not construed as simply a form of corporate social responsibility, or an act of 'goodwill' by investors in the ICT sector, it is important that:

- universal access and service polices are properly formulated
- universal access and service polices are given a proper space in the national policy and legislative frameworks as well as in the institutional framework for telecommunications regulation.

Recommendation and draft legislation: ADD Section 5 of HIPCAR.

The HIPCAR Policy Guidelines UAS provide for the following principles in relation to the institutional framework governing UAS:

- There is a clear legal mandate in the law to support or address the concept of Universal Access/Service (UAS).
- The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders.
- The law/legal mandate clearly identifies the designated agency for the implementation of the UAS Policy and defines its mandate.

These principles are reflected in HIPCAR Sections 5-7 and could be clarified to a greater extent in the Barbados Regs.

6. Implementation of UAS Policies

The NRA shall:

- a. Liaise and consult with information and communications providers, other industry stakeholders and end users on the status of information and communications technologies, markets and other relevant developments to determine and report on the key international best practice indicators that best measure progress towards UAS policy outcomes, such as, for example: access, connectivity targets attained, usage take-up, human capacity building;
- b. Identify appropriate projects and targets for moving toward universal service nationwide within a reasonable time frame;
- c. Determine, pursuant to public consultation, appropriate socioeconomic criteria to identify the geographic areas, population groups, institutions and organisations that may be eligible to benefit from UAS Project financing as provided for in these Regulations;
- d. Establish the mechanisms for proper management of a Universal Access and Service Fund (UASF) which may be established by the Minister in accordance with the provisions of these Regulations;
- e. Approve the application, qualification, and competitive and restrictive bidding conditions for the awarding of funds under designated projects, as provided for under Part III of these Regulations;
- f. Evaluate and define the scope and terms of potential UAS Projects;
- g. Monitor UAS Projects and enforce the terms of UAS Project contracts;
- h. Evaluate UAS Projects after their implementation;
- i. Monitor and enforce the mechanism for the assessment, collection and recovery of the required contributions to the UASF;
- j. Determine what mechanisms can be used to decide on UAS projects as provided for in Part III of these Regulations.

Formatted: Bullets and Numbering

n/a

n/a

Comments: the present regulation focuses on the USO and a Fund whereas HPCAR regulates the wider issue of universal service as a whole – this provision should therefore seek to address universal service as a whole – not just the UASF. The HPCAR Policy Guidelines and Model Regulations provide that the Minister determines policy and the NRA implements such policies.

The HPCAR UAS Assessment report provides that there is no one solution to creating an “appropriate” institutional framework for universal access and service. Universal access and service policy may be implemented by the country’s National Regulatory Authority (NRA), the ministry responsible for telecommunications and ICT, or an independent agency established to manage and administer universal access and service or even just the Fund. Within that context, it is however essential to ensure that the mandate of actors is clear so that they can effectively define the principle stages of a Universal Access and Service policy, including: planning, implementation and evaluation as well as specific policy objectives for UAS and regulatory measures in ICT Policy statements. Such a mandate must be set out as clearly as possible, preferably in the law.

Note – the assessment report does indicate that having the NRA responsible for the implementation of UAS is generally seen to be a sound approach for many countries because:

<ul style="list-style-type: none"> • The regulator typically has the required industry sector expertise, and skilled technical, economic and financial staff; • The regulator has a degree of independence and is perceived to be one step removed from politics; and • The regulator has established relationship and credibility with industry, which is often the main partner in implementing UAS policy. 	
Recommendation and draft legislation: ADD HIPCAR 6	
7. Consultation Prior to implementing UAS policies, the NRA shall hold a public consultation with all relevant stakeholders. All consultations shall:	
a. Set out the objectives of the consultation and present the proposed policies or rules. b. Provide a clear timeframe within which the NRA shall issue a decision. c. Ensure that comments and decisions are publicly available.	
n/a	n/a
Comments: transparency and consultation is key to effective regulation, especially as concerns UAS. Although Section 7 (c) does provide for consultation, a more clear provision could promote more transparency.	
In order to promote transparency and effective universal service policies, international best practices show that good governance principles should be provided for in the law, including transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets and obligations.	
Recommendation and draft legislation: ADD new Section as per HIPCAR Section 7.	
Add provisions to ensure that there is a substantial consultation - take out "relevant" and name stakeholders to be consulted e.g. providers, consumers, business and any other relevant stakeholders and publication of consultation and related process itself, not just results.	
8. Review of the Scope of UAS The NRA shall regularly review the scope of universal access and service that is undertaken in light of social, economic and technological developments and accommodates the prevailing technologies used by the majority of subscribers. In considering whether the scope of universal service obligations should be changed or redefined, the NRA shall consider the following:	
a. Whether specific services that are available to and used by a majority of consumers results in social exclusion by the minority of consumers who lack availability to such services; and b. Whether the availability and use of specific services convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public under normal commercial circumstances.	
33 (3) The Minister may, after consultation with the Commission and the universal service carrier, modify in writing the universal service obligation referred to in section 33(1).	n/a
(4) In modifying a universal service obligation pursuant to subsection	

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

<p>(3), the Minister, in consultation with the Commission, (a) shall permit the universal service carrier concerned in the modification to recover the cost of providing the modified universal service obligation; and (b) ensure that no unfair or unreasonable burden is placed on the universal service carrier or any person required to contribute to the provision of the service.</p>	
<p>Comments: It is important to realize that constant change in technology, services, and pervasiveness of various ICT services makes it necessary that the status of UAS are monitored and policies continue to be updated and developed. There is thus an ongoing need for public oversight to assess whether UAS has been achieved, to improve regulation, and to continually review the concept of what is considered UAS. Universal Access and Service strategy also need to take account of social, commercial and technological developments, if they are to be effective.</p>	
<p>Important too is the realization that constant change in technology, services, and pervasiveness of various ICT services makes it necessary that the status of UAS are monitored and policies continue to be updated and developed. There is thus an ongoing need for public oversight to assess whether UAS has been achieved, to improve regulation, and to continually review the concept of what is considered UAS.</p>	
<p>Recommendation and draft legislation: ADD new Section as per HPCAR Section 8.</p>	
<p>9. Periods of Review The review process shall be undertaken in accordance with Regulation 8. a. The first review shall take place within two years after the date of commencing the UAS policies and framework and b. Each subsequent review shall take place every three years.</p>	
<p>n/a</p>	<p>n/a</p>
<p>Comments: see above</p>	
<p>Recommendation and draft legislation: ADD HPCAR 9.</p>	
<p>The HPCAR Policy Guidelines UAS provide for the following key objectives and principles in relation to UAS :</p> <ul style="list-style-type: none"> • Key principles or goals for UAS are clearly defined in the law or any other document (e.g., Government policy). • A clear distinction is drawn between Universal Access and Universal Service. • There are specific criteria for determining which operators have or are subject to Universal Access/Service obligations and such criteria will be subject to a defined and regular process of review. • The law clearly defines specific ICT services and/or ICT applications that must be provided and to whom. • The law provides that Universal Access/Service targets are reviewed on a regular basis. 	

Formatted: Bullets and Numbering

- The law defines a requirement for review or re-evaluation of ICT services and ICT applications captured under Universal Access/Service Obligations.
- The law provides that stakeholders are consulted regarding Universal Access/Service targets/ obligations.
- Where obligations vary from operator to operator, such as a distinction drawn between dominant and non-dominant operators, the criteria for such distinctions are clearly provided for in the law.
- Comprehensive details of Universal Access/Service obligations are published by the designated agency.
- Comprehensive details of progress on the fulfillment of Universal Service obligations are regularly published by the operator.
- If the operator fails to meet its Universal Access/Service obligations, or contribution requirements, clear enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view.

10. Designation of Universal Service Providers

Pursuant to public consultation, the NRA may, for a specified area or in relation to a specific service, impose mandatory universal service obligations on authorised operators in order to eliminate the market gap and cover the entire country. Such obligations can extend to ICT services and/or ICT applications including community service initiatives, network roll-out targets, teledensity targets, the installation of public access points including public Internet kiosks and/or pay phones, requirements to reduce waiting lists, quality-of-service targets and geographic/population coverage and any other specified targets.

33. (1) There shall be a universal service obligation which is an obligation imposed on the Universal Service Carrier designated by the Minister under section 34(1), to

(a) ensure that basic telecommunications service, which is the ability to access dial tone in order to make telephone calls to other end-users, is reasonably accessible to all people in Barbados on an equitable basis wherever they reside or carry on business;

(b) ensure that payphones are reasonably accessible to all people in Barbados;

(c) permit access to directory inquiries;

(d) permit access to emergency numbers free of charge;

(e) provide appropriate telecommunications equipment to disabled persons to ensure access by those persons to the basic telecommunications service.

3. (1) When the Minister designates a universal service carrier for Barbados pursuant to section 34(1), the designation

(a) shall be for all geographical areas and all persons residing in Barbados; and

(b) shall be published in the Official Gazette and in at least one daily newspaper that is circulated in Barbados.

(2) (a) has first consulted with all licensees and is satisfied that it is in the public interest to replace the existing universal service carrier; and

(b) provides the existing universal service carrier with at least 12 months notice of the replacement.

Comments: This provision is a general provision which sets out one mechanism to achieve UAS – it can serve as a lead-in to Regulation 3. The Act will need to be adapted though to take account of this.

Section 33 of Act is very focused on voice telephony and more traditional USOs. Is voice not yet available? Think about different approach?

As provided for in the HIPCAR UAS Assessment Report, the definition of universal access/service and the scope of the obligations attached to the respective definitions will differ from one country to the next depending on the economic and social context and the political will to achieve universality in terms of means of communications. There is no fixed or standard definition for the scope of universal access/service obligations – however, currently established universal service/access policies typically seek to meet the objectives of availability, affordability and accessibility. The range of the scope of UAS obligations is very broad because developed and developing countries face different market conditions and must meet different objectives in order to provide unserved and underserved rural populations with universal service/access. In most countries, the scope of universal access and service (UAS) includes the provision of basic telephony. However, the definition of the scope of UAS is evolving to include Internet connectivity and increasingly broadband. as technology develops and countries come closer to reaching their goals for voice service availability. Radio and television broadcasting has traditionally not been included in the definition of the scope of UAS, but this is also changing rapidly due to developments such as convergence, Internet broadcasting and broadcasters also offering Internet and telephony services (e.g., cable TV operators). Broadcasting policies and regulation typically have coverage requirements, though without specifics about actual access, whether by public means or for private subscribers. For example: the definitions in ECOWAS-UEMOA vary with most countries referring to voice, but a few like Ghana have considered including a wider range of services to include voice, data transmission, Internet access, access to relevant local content and broadband, in the scope of “basic.”

Question to GOB: continue with mechanism of designated USP and Fund as sole mechanisms or try to achieve a more multi-pronged approach?

Recommendation and draft legislation: ADD new Section as per HIPCAR Section 10.

11. Obligations of Universal Service Providers

A universal service provider shall

- a. fulfil its universal service obligation in relation to the relevant area or service specified and shall follow all relevant guidelines issued by the NRA in relation to universal service; and
- b. Periodically publish details of progress towards its obligations in the manner prescribed by the NRA.

n/a

4. Any carrier designated as a universal service carrier pursuant to regulation 3 shall fulfil the universal service obligation
 (a) to the extent technically feasible and economically reasonable;
 (b) in a manner consistent with that obligation of the Act and the universal service plan agreed between the Minister and the universal service carrier in accordance with regulation 5.

5. (1) At least ninety days before the commencement of the financial year, the universal service carrier shall submit to the Minister a draft universal service plan with respect to the fulfilment of the

Formatted: Bullets and Numbering

	<p>universal service obligation; and the Minister shall consult with licensees on the proposed plan.</p> <p>(2) The plan referred to under paragraph (1) shall include an estimate of the net avoidable costs that the universal service carrier reasonably believes will arise during the following financial year to be called the "estimated net universal service costs".</p> <p>(3) The plan referred to under paragraph (1) with respect to each financial year shall be agreed between the Minister and the universal service carrier at least thirty days prior to the commencement of that financial year.</p> <p>6. When the plan has been agreed on between the Minister and the universal service carrier, it shall govern the fulfilment of the obligation for the relevant financial year, subject to any modifications as may be agreed between the Minister and the carrier.</p>
<p>Comments: Regulations 4-6 are clear</p>	
<p>Recommendation and draft legislation: KEEP</p>	
<p>12. Universal Service Obligations for Dominant Operators The NRA may impose different universal service obligations on dominant operators</p> <ul style="list-style-type: none"> a. Subject to technology neutrality and specific, objective and transparent criteria for determining which operators are dominant as provided for in the law; and b. Provided that any mandatory service obligations are applied on a non-discriminatory basis as between all similarly situated information and communications service providers. 	
<p>n/a</p>	<p>n/a</p>
<p>Comments: There is no specific imposition of USOs based on dominance.</p>	
<p>Recommendation and draft legislation: discuss. Not sure whether this is relevant in Barbados.</p>	
<p>13. Transparency and Non-Discrimination in Designation The designation of operators as universal service providers by the NRA shall be completed through an efficient, objective, transparent and non-discriminatory designation mechanism that ensures universal service is provided in a cost-effective manner.</p>	
<p>34. (1) The Minister shall designate in writing a carrier to be the universal service carrier for Barbados. (2) A designation under this section takes effect on the date specified</p>	<p>n/a</p>

Formatted: Bullets and Numbering

<p>by the Minister and shall have effect for the duration of the licence of the universal service carrier unless otherwise specified by the Minister, or unless the Minister designates another carrier to be the universal service carrier.</p> <p>(3) Where the Minister designates another carrier as a universal service carrier under subsection (2), the Minister shall give 12 months notice in writing of the new designation.</p> <p>(4) The carrier licence or the service provider licence of a designated universal service carrier is subject to the condition that the carrier must fulfil the universal service obligation.</p>	
<p>Comments: Act is clear – however, other practical issues relating to USO are in Regs – move?</p>	
<p>Recommendation and draft legislation: discuss – ADD</p>	
<p>14. Enforcement of Obligations A universal service provider who has failed to implement a universal service initiative:</p> <ul style="list-style-type: none"> a. Shall be deemed to be in breach of the [contract of service/authorisation] entered into with the NRA and the NRA may seek such redress as provided for in the law; and b. Commits an offence under these Regulations and is liable to such penalties prescribed by the Law. c. Has the right to appeal any decision of the NRA subsequent to subparagraphs (a) and (b) above and in accordance with the Law. 	
<p>n/a</p>	<p>7. (1) A universal service carrier shall not be considered to have failed to fulfil the obligation where it has been unable to provide service as a result of force majeure where that carrier</p> <ul style="list-style-type: none"> (a) advises the Minister of the force majeure when it arises; (b) has taken all reasonable steps to mitigate the impact of the force majeure; and (c) has consulted with the Minister to work to promptly resume fulfilment of that obligation when the force majeure has ended. <p>(2) "Force majeure" includes all matters outside the reasonable control of the universal service carrier, including natural disasters, acts of God, acts of war and labour disputes.</p>
<p>Comments: Reg 7 only deals with force majeure – HPCAR 14 is wider and clearer.</p>	
<p>Once successful bidders for UAS projects, either as part of their USO or under separate contracts, have commenced operation, they should also be subject to regular audit. Failure to meet minimum acceptable standards, as spelled out in their UAS service contract, should lead to notification that the provider should improve their level of service within a stipulated period of time or to meet contractual obligations.</p>	

Formatted: Bullets and Numbering

Failure to do so should carry the jeopardy of financial penalties, as provided for in the UAS service contract, and should include the reclaiming of subsidies already paid out.

Recommendation and draft legislation: ADD new Section as per HIPCAR Section 14.

15. Principles

Any financing of UAS should abide by the following principles:

- a. Financing mechanisms for UAS projects shall ensure that market participants only contribute to the financing of universal access and service as defined by the NRA in consultation with stakeholders according to the provisions of these Regulations, and not to other activities that are not directly linked to the provision of the universal access or service.
- b. Funds for UAS projects should not be used to support investments that would otherwise be made by private operators on a purely commercial basis nor should these funds give a competitive advantage or disadvantage to any service provider.
- c. The UAS Fund shall seek to promote efficient, self-sustaining projects which may continue to expand access to information and communications on their own initiative, requiring the minimum amounts of UAS Fund resources possible.
- d. The UAS Fund may be used to finance projects to the extent necessary to create adequate economic incentives for investors.

Formatted: Bullets and Numbering

33 (2) In giving effect to the provisions of subsection (1), the Minister shall ensure, in furtherance of the policy referred to in that subsection, that

- (a) the universal service obligation described in this Part is fulfilled as efficiently and economically as practicable;
- (b) the net avoidable costs that result from providing services in the course of fulfilling the universal service obligation are recovered from all carriers and service providers in accordance with sections 35 and 36 on an equitable basis;
- (d) the provision of the universal service obligation is co-ordinated with cost-oriented pricing efforts so that rate structures and levels for telecommunications services appropriately reflect underlying cost structures and levels; and
- (e) the universal service obligation is transparent, nondiscriminatory, non preferential, and competitively neutral.

33 (5) In this section "net avoidable costs" means all costs incurred by the universal service provider in connection with the fulfillment of the service obligation less any revenues derived from the provision of universal service.

5. (2) The plan referred to under paragraph (1) shall include an estimate of the net avoidable costs that the universal service carrier reasonably believes will arise during the following financial year to be called the "estimated net universal service costs".

Comments: Section 33 (2) of the Act reflects HIPCAR 15 principles. However, HIPCAR goes further than just USO and provides for financing of

UAS as a whole.	
Recommendation and draft legislation: MOD to take account of HIPCAR wider scope?	
<p>The HIPCAR Policy Guidelines UAS provide that there should be a multipronged approach to achieving UAS, and therefore that:</p> <ul style="list-style-type: none"> • The law provides that build-out requirements may be included in licenses to achieve UAS targets. • The law provides for complementary strategies to meet UAS objectives and targets – such mechanisms may include: additional roll out targets; micro-credit programmes; public-private partnerships, ‘build, operate and transfer’ (BOT) or ‘build, transfer and operate’ (BTO) arrangements; cooperatives and community-owned networks; regional operators; and telecentres and multipurpose community centres (MPCCs). 	
<p>16. Complementary Mechanisms to Achieve UAS Notwithstanding the provisions of Regulation 15 above, complementary strategies to meet UAS objectives and targets may be implemented by the NRA. Such mechanisms may include additional roll-out targets, microcredit programmes, public-private-partnerships, build-transfer-operators (BTOs), cooperatives, or multi-purpose community centres.</p>	
n/a	n/a
<p>Comments: As stated in the HIPCAR UAS Assessment report, complementary strategies can be applied to ensure that objectives and targets are met through a mix of tools. In Latin America, all 19 members of Regulatel have established during the last decade some form of universal access programs or initiatives aimed at increasing access to telecommunications networks and services. Studies show that nearly all countries have implemented a wide-variety of initiatives that use one or a combination of the following four mechanisms that directly or indirectly aim to increase investments and access to telecommunications infrastructure in high-cost rural and low-income areas:</p> <p>As stated in the 2005 WATRA Guidelines: “Member States shall design universal access/service policies, regulations and practices in order to create incentives for the private sector to extend universal access to communications services.” The Guidelines also provide that: “Member States shall use a multipronged approach to addressing universal access/service challenges and opportunities. That is, rely on complementary strategies to meet the objectives targets that have been set out.”</p> <p>The 2005 ITU West African Harmonization Report on Universal Access and Service Report provides that: “Over the years, given the economic case for universal access/service, there has been a shift towards seeing universal access and service schemes not as “burdens” but as opportunities from a commercial perspective. This policy choice, between setting mandates and providing incentives, is often captured in the term “pay or play.” That is, an operator can either pay to support universal access/service or undertake to provide it itself. The strategy of incentivizing operators to provide universal service does not diminish governments’ role in addressing universal access/service. Governments retain the responsibility to set overall policies which will facilitate private-sector contributions to universal access/service.</p>	

A common approach of engaging operators and allowing them to “play” is to provide incentives for operators to provide telecommunications in less profitable areas. Such incentives could include purely commercial mechanisms (not necessarily directly related to the telecommunications sector and therefore requiring consultation with other government departments) aimed at targeting the operators’ bottom line, such as tax concessions, removal of duties on telecommunication equipment targeted at rural and remote areas, or lifting of foreign exchange restrictions.

Other ways in which universal access/service may be promoted include:

- micro-credit programmes;
- ‘build, operate and transfer’ (BOT) or ‘build, transfer and operate’ (BTO) arrangements;
- cooperatives and community-owned networks;
- regional operators; and
- telecentres and multi-purpose community centres (MPCCs).

The HIPCAR Assessment report also refers to the European Commission Guidelines of September 2009 on the application of EC Treaty state aid rules to the public funding of broadband networks. The Guidelines provide a clear and predictable framework for stakeholders and will help Member States to accelerate and extend broadband deployment by outlining the rules and conditions on how public funding could be provided to build broadband networks in line with the EU state aid rule.

Recommendation and draft legislation: ADD new Section as per HIPCAR Section 16.

17. Project Financing

To fulfil the goal of universal access and service, the NRA shall identify and define specific projects, for which financial support may be provided through financing mechanisms as determined by the Minister. This objective should be accomplished according to objective, non-discriminatory, transparent and proportionality principles and in accordance with the principles specified in Regulation 15 above.

n/a

n/a

Comments: This provision seeks to introduce other approaches to identify projects. Think of NBPs where USFs are being applied outside of UASF framework – e.g. BTOP – there is a need to keep things coordinated though.

Recommendation and draft legislation: MOD as per HIPCAR Section 17.

18. Competitive Mechanism

In order to implement a universal access or service initiative identified in and in accordance with the directions set out in any Request for Proposals issued by the NRA, an authorised information and communications network operator or services provider may submit a bid for a project to be funded according to the financing mechanisms provided for under these Regulations. The competitive mechanisms to be used by the NRA may include a reverse auction or least subsidy auction.

n/a	n/a
Comments: transparent process foreseen.	
Recommendation and draft legislation: ADD HIPCAR Section 18.	
<p>The HIPCAR Policy Guidelines on UAS provide that there should be adequate and sustainable financing to support the provision of UAS. Within this context, the Guidelines provide that:</p> <ul style="list-style-type: none"> • source(s) of adequate and sustainable financing to support the provision of UAS, including general government budget allocations, contributions from operators, revenues from regulatory enforcement, donor agency contributions, etc. The law clearly establishes • that funding or subsidies provided for the promotion of UAS must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral. The law clearly provides • decides to fund operators through UAS programmes, subsidies should be ‘smart subsidies’ meaning that they are used to encourage operators to enter the market and not to create an unending dependency on subsidy. Where government • implicit and explicit funding arrangements for UAS. The law establishes both • be used to fund UAS – e.g. direct payment made to the operator, reverse auctions, etc. However, the payment mechanism and project selection mechanism shall be clearly defined in the law. Various mechanisms may • specific criteria, subject to a defined process of review, for who can benefit from the subsidies as well as for which services or infrastructure are eligible for subsidies. The law shall include • subsidies may be provided directly to consumers, as well as to governmental, educational institutions, eligible non-profits institutions, or other institutions – in the latter case, such subsidies may be provided through discounts. Operators may be reimbursed for the difference where subsidies are provided to consumers through discounts. The law provides that • support, a clear formula is defined in the law. Where operators receive • arrangements may include rate setting above cost as well as inter-carrier compensation fees to provide some mechanism of “support”, but should clearly determine which services or infrastructure receives the support from these implicit subsidies. Implicit funding 	
19. Mechanisms to Distribute Funds	

<p>(1) Notwithstanding the provisions of Regulation 16 above, financing for project contracts shall be provided on the basis of an open competitive bidding procedure unless the NRA, following public consultation as provided for in sub-section 3 below, deems it appropriate to distribute the funds on the basis of a restricted bidding procedure, a sole source procurement procedure or an emergency procurement procedure.</p> <p>(2) The NRA shall determine which method of procurement is appropriate in the circumstances and manage the procurement process in accordance with the requirements and procedures set out in the Law.</p> <p>(3) Where the NRA intends to use a method of procurement other than open competitive bidding, it shall notify the public of its intention to do so and the reasons for choosing of the proposed procurement method to be used.</p>	
n/a	n/a
<p>Comments: procedure</p> <p>Recommendation and draft legislation: ADD HIPCAR 19</p>	
<p>20. Provision of Subsidies</p> <p>Subsidies, where granted for the promotion of UAS, must be targeted and may be provided using various means, including:</p> <ul style="list-style-type: none"> a. Competitive minimum subsidy auctions which may be used to reduce the amount of financing necessary for public access projects financed by the UAS Fund and to encourage operators to enter the market rather than depend on subsidies indefinitely; b. Public access projects which can be designed to achieve long-term financial self-sustainability, especially where consideration is given to innovative low-cost technologies; c. Providing subsidies either directly to consumers, or to governmental, educational, eligible non-profit or other institutions through financing to projects or subsidies or discounts to end-users. 	
n/a	n/a
<p>Comments: this provision builds on requirement to have variety of mechanisms to promote UAS.</p> <p>Recommendation and draft legislation: ADD</p>	
<p>21. Calculating Universal Service Costs and Revenues</p> <p>Any calculation of the net cost of universal service should take due account of costs and revenues, as well as the intangible benefits resulting from providing universal service but should not hinder the general aim of ensuring that pricing structures reflect costs. Net costs of and net benefits universal service obligations should be calculated on the basis of transparent procedures.</p>	
<p>35. (1) The Commission shall prescribe a charge to be known as "an access deficit charge" to be paid by all carriers and service providers interconnecting to the service.</p> <p>(2) The Commission shall establish guidelines in writing for determining the amount of the access deficit charge.</p>	<p>5. (1) At least ninety days before the commencement of the financial year, the universal service carrier shall submit to the Minister a draft universal service plan with respect to the fulfilment of the universal service obligation; and the Minister shall consult with licensees on the proposed plan.</p> <p>(2) The plan referred to under paragraph (1) shall include an estimate</p>

Formatted: Bullets and Numbering

	<p>of the net avoidable costs that the universal service carrier reasonably believes will arise during the following financial year to be called the "estimated net universal service costs".</p> <p>(3) The plan referred to under paragraph (1) with respect to each financial year shall be agreed between the Minister and the universal service carrier at least thirty days prior to the commencement of that financial year.</p>
<p>Comments: this fits more into section on USO and is dealt with in Sections 33 and 35 of Act.</p>	
<p>Recommendation and draft legislation: complement the Act and Regulations and consolidate texts</p>	
<p>22. Recovering Net Costs of Universal Service When a universal service obligation represents an unfair burden on an undertaking, the NRA may establish mechanisms for efficiently recovering net costs. These mechanisms may include:</p> <ul style="list-style-type: none"> a. Recovery via public funds; b. Recovery from all licensees in a transparent fashion by means of levies on licensees; c. Financing the net costs of different elements of universal service through different mechanisms, and/or financing the net costs of some or all elements from either of the mechanisms or a combination of both; and d. In the case of cost recovery by means of levies on licensees, the NRA should ensure that the method of allocation is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. 	
<p>35. (1) The Commission shall prescribe a charge to be known as "an access deficit charge" to be paid by all carriers and service providers interconnecting to the service.</p> <p>(2) The Commission shall establish guidelines in writing for determining the amount of the access deficit charge.</p> <p>33 (5) In this section "net avoidable costs" means all costs incurred by the universal service provider in connection with the fulfillment of the service obligation less any revenues derived from the provision of universal service.</p>	<p>11. (1) A universal service carrier shall be entitled to recover the net avoidable costs of meeting the universal service obligation for each financial year from all carriers and service providers in accordance with section 33(2)(b) of the Act.</p> <p>(2) For the purposes of section 33(5) of the Act "the net avoidable costs" covers</p> <ul style="list-style-type: none"> (a) administrative costs and the universal service carrier's cost of capital on relevant assets; and (b) an interest component calculated from the date each cost is incurred to the date when payment is due and at a rate in accordance with the prevailing bank interest rate payable in respect of loans. <p>(3) For the purposes of section 33(5) of the Act "less any revenues derived from the provision of universal service" means any revenues derived by the universal service carrier from the fulfilment of the universal service obligation which the universal service carrier would</p>

Formatted: Bullets and Numbering

not have derived if it did not have the universal service obligation.

12. (1) Within 90 days after the end of each financial year, the universal service carrier shall lodge with the Fund Administrator a statement of the net universal service costs incurred by the universal service carrier in fulfilling the universal service carrier's universal service obligation in the last financial year, in these Regulations called "the claim".

(2) The claim shall be in writing and in a form approved by the Fund Administrator and shall set out

(a) the universal service carrier's net avoidable costs of meeting the universal service obligation for the financial year;

(b) such data as may be necessary to verify the calculation by the universal service carrier of its net avoidable costs for the financial year; and

(c) such other information as is necessary for the purposes of the claim.

(3) The claim shall include a statement as to whether the net universal service costs incurred were greater than or less than the estimated net universal service costs in the plan, and any reasons for material deviation from those estimated costs.

(4) The claim must be accompanied by a report of the universal service carrier's auditor that

(a) states that the auditor has been given sufficient access to the universal service carrier's records in order to audit the claim;

(b) states that the auditor has audited the claim for verification; and (c) contains a declaration of the opinion of the auditor as to the veracity of the claim.

(5) In the event that the Minister or the Fund Administrator disputes the claim, the universal service carrier shall not discontinue any service in any area of Barbados as a direct result of the dispute until such dispute is resolved; but the parties to the dispute shall each use their best efforts to resolve any such dispute within 90 days.

(6) Paragraph 5 shall not affect the right of the universal service carrier

	<p>to discontinue service to any person where the discontinuance is not a direct result of a dispute under paragraph (5).</p> <p>15. Within 30 days of the date a claim is submitted pursuant to regulation 12, the Fund Administrator shall provide to the universal service carrier, a notice specifying the total amount of net avoidable costs to which a universal service carrier is entitled, using the information provided in relation to the financial year.</p> <p>19. (1) Where the universal service carrier has calculated using its date, that there is a deficit in the contributions it has received and the net avoidable costs incurred in any previous financial year, the universal service carrier may submit to the Fund Administrator, a written claim for compensation to be known as the "adjustment claim".</p> <p>(2) The adjustment claim referred to in paragraph (1) must set out</p> <ul style="list-style-type: none">(a) audited net avoidable costs of the universal service carrier incurred for the financial year;(b) details of how those net avoidable costs have been calculated;(c) a statement as to whether the net avoidable costs were greater than or less than the estimated universal service costs in the plan for the relevant financial year, and any reasons for material deviation from those estimated universal service costs; and(d) such other information, if any, as the adjustment claim requires. <p>20. As soon as practicable, and in any case, within 14 days of its receipt, the Fund Administrator shall give a copy of the adjustment claim to each licensee for the purpose of consultation and with adequate time to seek additional data and views from licensees.</p> <p>21. Where there is a deficit between the contributions received by the universal service carrier and its net avoidable costs incurred in the relevant financial year, and the universal service carrier has issued an adjustment claim for compensation pursuant to regulation 19, the</p>
--	--

	Fund Administrator shall, after conclusion of a reasonable period of consultation and the publication of a determination, include an adjustment in the contributions to be made in the then current financial year and the following year to ensure that the universal service carrier is reimbursed an amount equal to that deficit.
Comments: this fits more into section on USO and is dealt with in Sections 33 and 35 of Act. HIPCAR 22 can add principles. Regs are about process.	
Recommendation and draft legislation: ADD HIPCAR 22.	
23. Submission of Proposals for UAS Projects	
Notwithstanding Regulation 18 above, in accordance with these Regulations and the procedures set forth by the Minister, any person may submit a proposal for a UAS Project to be reviewed by the NRA.	
n/a	n/a
Comments: HIPCAR is wider in that it considers various mechanisms to achieve UAS, including USOs, USAF and other mechanisms.	
Recommendation and draft legislation: MOD in line with HIPCAR 23.	
24. Identification of UAS Projects by the NRA	
At the beginning of each operating year, the NRA shall initiate the process of identifying projects to be considered for UAS, including those to be funded through the various financing mechanisms provided for under these Regulations within the operating year. This process shall include:	
<ul style="list-style-type: none"> a. Solicitation of proposals from information and communications network/facilities operators and service providers and other interested parties. b. Determine the priority of projects based on the UAS policy as determined by the Minister. c. Development of proposals for projects identified by the NRA. d. Costing of proposals to be financed and identification of financing mechanisms. 	
n/a	n/a
Comments: HIPCAR is wider in that it considers various mechanisms to achieve UAS, including USOs, USAF and other mechanisms.	
Recommendation and draft legislation: MOD in line with HIPCAR 24.	
25. Identification of Projects by the NRA	
Notwithstanding Regulation 24 above, the NRA may identify and solicit UAS projects through a Request for Proposals at any time during the operating year.	
n/a	n/a

Formatted: Bullets and Numbering

Comments: HIPCAR is wider in that it considers various mechanisms to achieve UAS, including USOs, USAF and other mechanisms.	
Recommendation and draft legislation: MOD in line with HIPCAR 25.	
26. Project Solicitation	
The process of soliciting project proposals from information and communications network operators and service providers and other interested parties as provided for under Regulation 23 above, may be done through	
<ul style="list-style-type: none"> a. Public meetings; b. Electronic and online advertisements or solicitations; c. Public announcements; d. Advertisements; or e. Appropriate promotional activities. 	
Comments: HIPCAR is wider in that it considers various mechanisms to achieve UAS, including USOs, USAF and other mechanisms. In addition, in the interest of transparency, HIPCAR promotes public consultation as much as possible.	
Recommendation and draft legislation: ADD HIPCAR 22.	
27. Eligibility to Bid on UAS Projects Financing	
Notwithstanding the terms of its licence, any authorised information and communications network operator or service provider shall be automatically considered eligible to bid for any UAS project including UAS Projects under UAS Financing as long as the provider is authorised to operate the network or offer the service or services that comprise a universal service initiative.	
n/a	n/a
Comments: HIPCAR is wider in that it considers various mechanisms to achieve UAS, including USOs, USAF and other mechanisms.	
Recommendation and draft legislation: ADD HIPCAR 27.	
28. Adjudication of Multiple Bids	
Adjudication of multiple bids may be addressed as follows:	
<ul style="list-style-type: none"> a. If more than one bid is submitted, the NRA may adjudicate the establishment or operation of networks, provision of services, or both and shall use the most appropriate selection method which may include the reverse auction method or, the lowest subsidy method, to evaluate the submitted bids. b. Notwithstanding sub-paragraph (a) above, where no bids have been selected or entered, the NRA may appoint a qualified contracting entity to undertake the project, subject to transparent procedures and subject to the Law. 	
n/a	n/a
Comments: HIPCAR is wider in that it considers various mechanisms to achieve UAS, including USOs, USAF and other mechanisms.	
Recommendation and draft legislation: ADD HIPCAR 28.	

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

29. Award of Funding

Funding for a universal service project shall be awarded in the form of a fixed price contract and may be disbursed by the NRA in one or more payments to correspond to milestones established under the service contract for each project. Funds may be disbursed according to the following:

- a. Disbursements for UAS Projects under UAS Financing may be in the form of reimbursements or advances.
- b. The NRA shall make disbursements only after disbursement conditions in the service contract have been met.
- c. The NRA shall prepare and manage all payment certifications, which shall certify that the entity receiving UAS financing has met the obligations or milestones specified in their UAS service contracts.
- d. The NRA may, in cases it deems appropriate, make an advance payment of no greater than 20 percent of the total project budget to an entity receiving UAS financing. Advances shall be subject to reimbursement or a lien against equipment purchased in cases where a contractor fails to meet its obligations under the service contract. The entity receiving UAS financing may be required to provide supporting documents to the NRA to show that advances have been used to finance eligible expenses.

Formatted: Bullets and Numbering

n/a

n/a

Comments: HIPCAR tries to promote transparency and good governance – this provision is an illustration of this approach.

Recommendation and draft legislation: ADD HIPCAR Section 29.

30. Project Implementation

- (1) In accordance with the terms and conditions of the UAS contract, a contractor shall provide periodic reports to the NRA, detailing its progress in fulfilling contractual requirements, reporting on project financing and accounts, reporting on achieving project objectives and timetables, and explaining any delays.
- (2) The NRA may adopt and publish guidelines establishing minimum project management principles to which UAS contractors shall adhere to, based on international best practices and subject to public consultation.

n/a

n/a

Comments: HIPCAR is wider in that it considers various mechanisms to achieve UAS, including USOs, USAF and other mechanisms.

Recommendation and draft legislation: ADD HIPCAR 30.

31. Enforcement of Project Implementation

- (1) Where a UAS contractor fails to complete or comply with the requirements of a Project contract, the NRA may require the contractor to compensate the NRA up to the amount of funds paid to achieve UAS under the terms of the project contract, plus any administrative and legal costs incurred.
- (2) Contractors shall not be required to pay such compensation until dispute resolution provisions provided for in the law or contract have been exhausted.

n/a	n/a
<p>Comments: HIPCAR seeks to promote transparency and good governance.</p>	
<p>Recommendation and draft legislation: ADD HIPCAR 31.</p>	
<p>The HIPCAR Policy Guidelines on UAS provide that any UASF should be managed in a clear and transparent way. Within that context, the Guidelines provide that:</p> <ul style="list-style-type: none"> • The law provides for the establishment of a Fund, where required, and this decision is linked to a process of analysis of the market realities and consultation of stakeholders. • The law provides for a cap of contributions to the Fund. Where there are extraordinary needs, in terms of UAS, it will be subject to a process of analysis of the market realities and consultation of stakeholders. • The law clearly identifies who is responsible for the management and operation of the Fund and ensures the independence of this entity through clear regulatory provisions, including provisions on public accountability in relation to the Fund. • The law is non-discriminatory and provides that all licensed entities must contribute to the Fund. • Payments into the Fund shall be at reasonable intervals – this may be on an annual or quarterly basis. • Operators are required to file financial reports that the Fund manager uses to calculate contributions on an annual basis. • The law defines who is the oversight entity/body as well as a requirement for the Fund manager to report to the regulator or ministry. • The law provides for regular reviews of Fund operation to determine changes that may be warranted as a result of shifts in the marketplace. 	
<p>32. Principles of UASF The Minister may establish by Regulation and pursuant to a process of analysis of the market realities and consultation of stakeholders a Universal Access and Service Fund(s) (UASFs), which are funds that may be created specifically to subsidise the delivery of information and communications services for communities and population groups that fall within the scope of UAS.</p>	
<p>36. (1) There is hereby established a fund to be known as a Universal Service Fund, the resources of which comprise such amounts as may be collected under the authority of this Act from all carriers and service providers for the purpose of funding the universal service. (2) The Universal Service Fund shall be administered by a person designated by the Minister in accordance with regulations made for the purpose by the Minister.</p>	<p>8. (1) The Universal Service Fund shall be (a) administered in accordance with the principles of the universal service obligation and these Regulations; and (b) conducted by means of payments between operators under the supervision of the Fund Administrator where the Minister considers it would not unreasonably prejudice the objective of universal service to do so, having regard to the impact on telecommunications carriers and service providers and universal service carriers.</p> <p>9. (1) The Minister may appoint a Fund Administrator and notice</p>

	<p>of that appointment shall be published in the Official Gazette. (2) The Fund Administrator shall oversee and administer the running and operation of the Fund in accordance with section 36(2) of the Act and these Regulations. (3) Where a Fund Administrator has not been appointed under paragraph (1), the duties of the Fund Administrator under these Regulations shall be fulfilled by the Minister. (4) The Fund Administrator may recover costs reasonably incurred in the exercise of his duties under these Regulations from licensees through the Administrative Levy referred to in regulation 10.</p>
<p>Comments: Act and Regs establish Fund and principles of management of Fund.</p>	
<p>Recommendation and draft legislation: need to draft wording so as to reflect need to have various mechanisms of achieving UAS and of financing UAS, one of which may be a UASF.</p>	
<p>33. UASF Contributions Where the Minister creates a UASF, he shall impose a system for contributions to the Fund that:</p> <ul style="list-style-type: none"> a. Ensures UASF contribution requirements are not excessive and are assessed on the revenues of the authorized provider's information and communications services or such other alternate methods as determined; b. Respects the principles of transparency, non-discrimination and proportionality whereby all similarly-situated providers are treated equally; c. Leads to the least market distortion in that contributions are recovered in a way that minimises the impact of the financial burden falling on end-users, for example by spreading contributions as widely as possible; d. May exempt licensees whose annual turnover is less than a set limit below a specified revenue threshold from contributing to the Fund; and e. Requires payments on a quarterly or annual basis. f. Is subject to a cap of contributions to the Fund. 	
<p>n/a</p>	<p>10. There shall, with the approval of the Minister of Finance, be a levy to be known as an "administrative levy" charged on licensees to defray the costs reasonably incurred by the Fund Administrator in the exercise of his duties under these Regulations.</p> <p>16. (1) The Fund Administrator shall as soon as practicable, and in any case within 120 days of the end of the financial year, issue a notice to each licensee specifying the contribution to be known as the "Fund Levy" to be made by each licensee to the net avoidable costs for</p>

Formatted: Bullets and Numbering

	<p>that financial year.</p> <p>(2) The Fund Levy for each licensee for each Financial Year shall be an amount equal to the net avoidable costs of the universal service carrier for the financial year divided by the total industry eligible revenue for the financial year multiplied by the eligible revenue of the licensee for that financial year.</p> <p>17. (1) Where either the claim or the statement of eligible revenue of any licensee or both the claim and statement of eligible revenue of any licensee is in dispute, the Fund Administrator shall provide to the universal service carrier a notice as specified in regulation 15 and issue notices to all licensees as specified in regulation 16; and the notices shall be subject to revision at such time as the dispute or disputes are resolved.</p> <p>(2) Where notices specified in regulations 15 and 16 are revised as provided for in regulation 17, the Fund Administrator shall issue the revised notices to licensees, and each licensee shall make payments to the Fund as required by the revised notices and in accordance with regulation 18.</p> <p>(3) Upon request by either party to a dispute in cases where both parties to the dispute have used their best efforts to resolve the dispute and this has failed, the Minister may</p> <p>(a) act as arbitrator in the dispute and issue a determination to settle the dispute; or</p> <p>(b) appoint an independent arbiter agreed upon by the parties.</p> <p>(4) The determination of the independent arbiter agreed on by the parties to the dispute shall be referred to the Minister for his approval and that approval shall not be unreasonably withheld.</p> <p>(5) Where a dispute remains unresolved for more than 90 days, a licensee who is a party to the dispute shall be entitled to apply to a Judge in Chambers for determination of the matter.</p> <p>18. (1) Upon receipt by a licensee of a notice from the Fund specifying that licensee's Fund Levy as specified in regulation 16 or</p>
--	--

	<p>revised notice as specified in regulation 17(2), that licensee shall, within 30 days of receipt of the notice,</p> <p>(a) where the Fund is not a virtual fund, pay its Fund Levy in full to the Universal Service Fund; or</p> <p>(b) where the Fund is a virtual fund, pay its Fund Levy directly to the universal service carrier.</p> <p>(2) Where the Fund is not a virtual Fund, the Fund Administrator shall pay each Fund Levy directly to the universal service carrier as soon as is practicable upon receipt by the Universal Service Fund of that Levy, and in any case, not more than 14 days after receipt by the Universal Service Fund of that Levy.</p> <p>(3) Where the Fund is a virtual Fund, each licensee shall provide written confirmation of payment of the Fund Levy to the Fund Administrator within 2 business days of having made payment to the universal service carrier; and the universal service carrier shall provide written verification to the Fund Administrator of receipt of payment of the Fund Levy from a licensee within 5 business days of the receipt of the payment.</p> <p>(4) Where a licensee, in this regulation referred to as the "defaulting licensee", fails to pay the Fund Levy in a timely manner, then to the extent that the payment remains outstanding,</p> <p>(a) the Fund Administrator may</p> <p>(i) sue the defaulting licensee for recovery of the debt in accordance with the Laws of Barbados;</p> <p>(ii) adjust the amount of the payment due as a result of the defaulting licensee's failure to pay, and the adjustment shall be an amount to at least compensate the universal service carrier for the value of interest on the defaulting licensee's Fund Levy, calculated from the date when payment was due, to the date when payment is received by the universal service carrier; and</p> <p>(iii) invoke the operation of the guarantee under regulation 24 of these Regulations.</p> <p>(b) where the Fund Administrator has not recovered the debt under paragraph (4), the universal service carrier may</p>
--	--

	<p>(i) pursue the defaulting licensee for the recovery of the Fund Levy in accordance with the laws of Barbados;</p> <p>(ii) claim interest at a rate in accordance with the principles applied to normal commercial transactions;</p> <p>(iii) recover the Levy by either off-setting it against payments for goods or services, including interconnection services purchased by the universal service carrier from the defaulting licensee, or by adding it to payments for goods and services including interconnection services purchased by the defaulting licensee from the universal service carrier;</p> <p>or</p> <p>(iv) recover all reasonable fees and costs associated with, or arising out of the pursuit of, or with the recovery of, the Fund Levy;</p> <p>(c) the Minister shall take appropriate enforcement action under the Act against a defaulting licensee, including</p> <p>(i) revocation or suspension of the licence of the defaulting licensee;</p> <p>and</p> <p>(ii) fines imposed on the defaulting licensee for late levy payments</p> <p>22. (1) The Fund Administrator shall as soon as practicable and in any case within 120 days of the end of the financial year, issue a notice to each licensee specifying the administrative levy.</p> <p>(2) The administrative levy for each licensee for each financial year shall be an amount equal to the costs reasonably incurred by the Fund Administrator in the exercise of his duties under these Regulations and audited as required by regulation 9(7) divided by total industry eligible revenue for that financial year multiplied by the licensee's eligible revenue for that financial year.</p> <p>23. (1) Upon receipt by a licensee of a notice from the Fund Administrator specifying that licensee's administrative levy referred to in regulation 22, that licensee shall pay its administrative levy in full to the Fund Administrator within thirty days.</p> <p>(2) In default of payment of the administrative levy by a licensee, the Fund Administrator may sue for and recover the payment in any court.</p>
--	--

24. (1) Each licensee, other than a universal service carrier, shall have in force a guarantee in a form acceptable to the Fund Administrator and given by a third person regarding discharge of the licensee's liability for the Fund Levy imposed under these Regulations, and that acceptance shall not be unreasonably withheld.
(2) For the purposes of this regulation, a "third person" means
(a) a bank licensed under the Financial Institutions Act; or
(b) a guarantor accredited by the Fund Administrator for the purposes of this regulation; or
(c) a guarantor whom the Fund Administrator approves in advance in writing for the purposes of this regulation.

Comments: Barbados Regs give more detail on process. However, HIPCAR 33 includes some key principles.

As stated in the Infodev ICT regulation toolkit Module on Universal Service, given that operator levies are generally the most common source of funding for Universal Access and Service Funds (UASFs), typically, all major operators, fixed and mobile, are required to contribute. In some cases (e.g., Uganda), ISPs and even post and courier companies have been required to contribute, even though many ISPs are still only marginally profitable and smaller ISPs often state to be unable to afford a contribution.

On balance, it is probably best to require all telecommunications and Internet service providers (including VoIP service providers) to contribute to the UASF. The matter of affordability can be addressed in a number of ways; the most practical approach may be to set a minimum size limit (e.g., annual revenue or market share [1]) above which a company becomes required to contribute to the fund.

Regulators and governments need to be careful to ensure equity both in the contributions levied and in the eligibility for subsidy allocations.

The Module also provides that there are two ways to estimate what is an appropriate funding level for each country. These are as follows:

1. Policy-driven approach – Determine what scale of subsidy programme would be required to meet the country's policy objectives and time-bound universal access and service (US) targets. The total cost and subsidy estimates are compared to the total sector revenues. The percentage of total sector gross or net revenues calculated by this method becomes the high level estimate; or
2. Market-driven approach – Determine from a survey or assessment of operator and other stakeholder opinions, as well as from international benchmarks, what operators would accept or could afford as a reasonable contribution. Then develop the UASF programme to match this.

It concludes that for many reasons, a hybrid iterative use of these methods is recommended. The main reasons for this are:

- Levies based on a policy-driven approach may be a political wish list and too costly which is not rooted in the reality of what can be achieved, or should be attempted, in a given time frame;
- The policy-driven approach subsidy programme could also require a larger than practical bureaucracy, in the form of UASF staff and programme management, than is realistic or sustainable by the industry in a liberalized market; and
- In some cases, the initial estimate of programme cost quickly becomes out of date due to the sector’s rapid development (i.e., its expansion growth which in turn reduces the need for intervention and its financial growth which provides more finance than thought to the UASF), resulting in far less UASF subsidy requirement than first thought, and consequently less operator levy.

Recommendation and draft legislation: ADD HIPCAR 33

34. Monies to be Paid into UASF

Where the Minister creates a UASF, revenues shall be collected from a variety of sources including international and national government sources as well as from information and communications network/facilities operators and service providers, including:

- Such amounts as may be collected from all network operators/facilities operators and service providers for the purpose of funding universal service;
- Any grant, contribution or loans from any international organisations or donors;
- Any monies appropriated by the Government for this purpose;
- Interest on monies held and penalties collected from UAS providers; and
- Any other source determined by the Minister.

Formatted: Bullets and Numbering

n/a

n/a

Comments: As stated in the Infodev ICT regulation toolkit module on UAS, Universal Access and Service Funds (UASFs) are generally financed from one or more of the following sources:

- Government general budget (in a small minority of cases, including one of the first funds, Chile’s Fondo de Desarrollo de las Telecomunicaciones);
- Industry levy, as a percentage of annual revenue, on certain classes of licensed operators;
- Various other regulatory sources such as the proceeds of license competitions, frequency spectrum auctions and fees; and
- Once-only contributions from government, financed by loans or grants from international donors such as the World Bank, contributing seed finance to assist UASF start-up in the early years.

Most UASFs are financed mainly through annual operator levies although the legal instruments (e.g., the communications law) establishing the fund might typically name all potential sources, or be worded in an open fashion to include all possible sources.

Recommendation and draft legislation: ADD HIPCAR 34

35. Contributors’ Reporting Requirements

The Minister shall, pursuant to public consultation, set forth the terms that all operators authorised to provide information and communications networks/facilities and services must provide in quarterly or annual revenue reports, which the NRA shall use to calculate each operator's contributions, where contributions are based on revenues.

n/a

- 13.** (1) Within 90 days after the end of each financial year, each licensee shall lodge with the Fund Administrator a statement of eligible revenue which each licensee has received in the last financial year.
(2) The statement of eligible revenue of each licensee must be accompanied by a report of an approved auditor that
(a) states that the auditor has been given sufficient access to the licensee's records in order to audit the statement of eligible revenues;
(b) states that the auditor has audited the statement of eligible revenue for verification; and
(c) contains a declaration of the opinion of the auditor, as to the veracity of the statement of eligible revenue; and where the licensee is not a public company, the statement shall be contained in an affidavit sworn by the Chief Executive Officer or Financial Controller of the licensee.
(3) Where the statement of eligible revenue is disputed, the parties to the dispute shall use their best efforts to resolve the dispute within 90 days.
- 14.** The Fund Administrator may make whatever reasonable inquiries he deems necessary or desirable in order to determine whether
(a) a claim by a universal service carrier for compensation from the Fund for a financial year correctly states its estimated net universal service costs incurred in that financial year; or
(b) a statement from a licensee correctly states the eligible revenue of that licensee for a financial year.

Comments: Regs clear.

Recommendation and draft legislation: consolidate with HIPCAR

36. Separate Accounts

Any monies accruing to the UASF shall be:

- a. Kept in one or more accounts, separate and independent from any other operating accounts of the NRA.
- b. Initially deposited in a designated UAS Fund bank account and shall be disbursed upon authorisation of the NRA for specific Fund-related

Formatted: Bullets and Numbering

activities in accordance with these Regulations.	
n/a	n/a
Comments: process to ensure good governance and transparency.	
Recommendation and draft legislation: ADD HIPCAR 36.	
<p>37. Separate Budgets The NRA shall prepare and keep separate budgets for the Fund Projects and Fund Operations through accounting allocations.</p> <p>a. The Operating Budget shall be used for operating the Fund and administrative expenses charged to the Fund shall not exceed ten (10) percent of the annual budget of the Fund.</p> <p>b. The Fund Project Budget shall be allocated to Fund Projects that have been selected and approved for financing in accordance with these Regulations.</p> <p>c. Before the end of the financial year, the NRA shall prepare budget forecasts for the Fund for the following financial year.</p>	
n/a	<p>9. (4) The Fund Administrator may recover costs reasonably incurred in the exercise of his duties under these Regulations from licensees through the Administrative Levy referred to in regulation 10.</p> <p>(5) The Fund Administrator shall submit to the Minister for his approval, a budget detailing the total expected expenditure for the administration of the Fund for the following financial year 90 days before the start of the financial year; and the Minister shall make the budget available to the universal service carrier and licensees upon their request.</p> <p>(6) The Fund Administrator shall keep proper accounts and adequate financial and other records which shall be made available to the Minister or the auditor at their request.</p>
<p>Comments: HIPCAR and Regs both address important points As stated in the Infodev IICT regulation toolkit Module on Universal Service, an important point as reflected in HIPCAR 37 too is that a UASF's legitimate administrative and operational expenses should be spelled out in the operating manual, administrative rules or regulatory procedure describing the administration of the fund. The toolkit provides examples of legitimate costs and expenses:</p> <ul style="list-style-type: none"> • Salaries, emoluments, remunerative packages and allowances for: • UASF departmental staff; • Regulatory staff seconded temporarily explicitly to the UASF operation; and • Board members (in accordance with the provisions of the appropriate regulation); • Office equipment, administrative and operational costs specifically and directly related to requirements of the UASF operation; 	

Formatted: Bullets and Numbering

- **Operational and travel expenses for the activities of the UASF Board, the UASF management and staff;**
- **Administrative fees associated with outsourcing contracts as allowed in the operating manual of regulation;**
- **Annual financial auditing by an independent accounting firm;**
- **Non-administrative special costs:**
 - **the carrying out of technical, socio-economic or demand studies directly pertinent to the development of the UASF programme and tender competitions;**
 - **consultancy or advisory contracts directly associated with the UASF’s tender competitions;**
 - **the hiring an independent technical auditor or the auditing process undertaken by the UASF departmental staff to certify milestone completion before disbursement of certain subsidy tranches as per contract; and**
 - **the carrying out of monitoring and evaluation activities.**

Additional items not covered in the agreed list should be added only with the express approval of the UASF Board. All finances should be governed in strict accordance with the rules and operating guidelines established by the Operating Manual or regulation and established budgeting practice. If the fund is managed as a department of the regulator, the finances, including all payments, withdrawals or other financial transactions relating to the UASF, should also satisfy the regulator’s requisite financial policies and regulations.

Recommendation and draft legislation: consolidate both texts.

38. Audit of the Fund Administrator

To ensure transparency in the Fund’s accounting, the Minister shall conduct an audit of the Fund administration by the NRA under the following circumstances:

- a. Costs reasonably incurred by the NRA in the exercise of its duties under these Regulations and the accounts of the Fund itself under the control of the NRA, shall be subject to an annual audit conducted by an independent auditor who shall be appointed by the Minister.
- b. The [Auditor General or any other relevant government entity or entity nominated by the Authority General] may at any time, and shall on direction of the Minister responsible for Finance, carry out an investigation or audit of the accounts of the UASF.

Formatted: Bullets and Numbering

n/a

9. (7) Costs reasonably incurred by the Fund Administrator in the exercise of his duties under these Regulations and the accounts of the Fund itself under the control of the Fund Administrator, shall be subject to an annual audit conducted by an auditor who shall be appointed by the Minister.
 (8) The Auditor General may at any time, and shall on direction of the Minister responsible for Finance, carry out an investigation or audit of the accounts of the Fund Administrator.

Comments: need for good governance and transparency- Regs reflect such principle.

This is in line with best practices as reflected in Infodev ICT regulation toolkit Module on Universal Service which provides that the UASF should have its own separate account in a reputable bank, which is exclusively used for its purpose and not mixed with any other regulatory activities, if the regulator is the UASF administrator. The UASF should also have also a distinct accounting system that is not linked in any way with other institutions, with government or even the regulatory body which may manage the day-to-day UASF operations. In a system that maintains separate accounting practices for the UASF, balances can be monitored, expenditures can be tracked and thus the public's trust in the UASF can be upheld. This is because in some countries, UASFs without proper accounting separation and standards, or where the funds are paid into a government account, have been appropriated and used for purposes other than initially intended.

Recommendation and draft legislation: consolidate texts.

39. Reporting Requirements by the NRA

The NRA shall publish an Annual Report on the Universal Access and Service Fund and/or projects at the end of each fiscal year, which includes:

- a. The audited Financial Statements of the Fund;
- b. Details of activities supported, whether by a Fund or otherwise and progress made; and
- c. Details of awards of contracts under the UASF.

Formatted: Bullets and Numbering

n/a

9. (5) The Fund Administrator shall submit to the Minister for his approval, a budget detailing the total expected expenditure for the administration of the Fund for the following financial year 90 days before the start of the financial year; and the Minister shall make the budget available to the universal service carrier and licensees upon their request.

(6) The Fund Administrator shall keep proper accounts and adequate financial and other records which shall be made available to the Minister or the auditor at their request.

...

(9) Within 90 days of the end of each financial year, the Fund Administrator shall report to the Minister on the costs reasonably incurred in the exercise of his duties under these Regulations.

(10) Within 200 days of the end of each financial year, the Fund Administrator shall report to the Minister on the audited accounts of the Fund.

(11) The reports of the Fund Administrator provided to the Minister under paragraphs (9) and (10) shall be made available to the public on request.

Comments: As stated in Infodev ICT regulation toolkit module on Universal Service, good practice is that the finances of the UASF should be audited annually by an independent accounting firm and the report should be presented to the requisite government authority and be

published for the general public. Also, an annual report of all the UASF's activities, its programmes, projects and plans, progress and setbacks, receipts and disbursements should be prepared, and made public.

Recommendation and draft legislation: consolidate texts.

Annex 1

**Participants at the Stakeholder Consultation and Capacity Building Workshop on
Telecommunication Matters (Universal Access/ Service,
Access & Interconnection, and Licensing)
Co-organised with the Government of Barbados and ITU/EU funded HIPCAR Project
Barbados, 8-10 August 2011**

Organization	Position	Last Name	First Name
Atom Solutions	Consultant	EDWARD	Erwin
BANGO	Secretary General	KING	Roosevelt
Barbados Consumers Research Org.	Consultant	GIBBS-TAITT	Malcolm
Cable & Wireless/ LIME	Regulatory Specialist	BEST- BRATHWAITE	Juliet
Cable & Wireless/ LIME	Manager Regulatory Affairs	DOWNES-HAYES	Claire
Cable & Wireless/ LIME	Regulatory Advisor	SUTHERLAND CAMPBELL	Melesia
Digicel	Legal Counsel	ALLEYNE	Nadia
Fair Trading Commission	Telecoms Analyst	HUNTE	Edward
Fair Trading Commission	Director	SEALY	Sandra
Home Communications	Consultant	HOPE	Hallam
International Telecommunication Union	HIPCAR Project Coordinator	LUDWIG	Kerstin
Prime Minister's Office, Telecommunications Unit	Chief Telecommunications Officer	BOURNE	Reginald
Prime Minister's Office, Telecommunications Unit	Senior Telecommunications Officer	DEVONISH	Winston
Prime Minister's Office, Telecommunications Unit	Telecommunications Officer I	EVELYN	Renee
Prime Minister's Office, Telecommunications Unit	Telecommunications Officer I	FOSTER	George
Prime Minister's Office, Telecommunications Unit	Telecommunications Officer I	KENNEDY	Ronald
Prime Minister's Office, Telecommunications Unit	Telecommunications Officer II	WATSON	Calvin
Pygma Consulting International	ITU Consultant	MADDENS- TOSCANO	Sofie
TeleBarbados	Executive Vice President	HINCKSON	Patrick
Wi-Net	Director	JORDAN	Raphael

Private Consultations

Organization	Position	Last Name	First Name
Cable & Wireless/ LIME	Regulatory Specialist	BEST-BRATHWAITE	Juliet
Cable & Wireless/ LIME	Manager Regulatory Affairs	DOWNES-HAYES	Claire
Cable & Wireless/ LIME	Regulatory Advisor	SUTHERLAND CAMPBELL	Melesia
Digicel	Head of Legal and Regulatory, Eastern Caribbean	MC INTYRE	Helga
Ministry of Foreign Affairs and Foreign Trade, EPA Implementation & Coordination Unit	Consultant	HUMPHREY	Errol
GIZ, EPA Support Project	Project Manager	GLASS	Robert
Fair Trading Commission	Director	SEALY	Sandra
TeleBarbados	Executive Vice President	HINCKSON	Patrick
Prime Minister's Office, Telecommunications Unit	Chief Telecommunications Officer	BOURNE	Reginald
Prime Minister's Office, Telecommunications Unit	Telecommunications Officer I	KENNEDY	Ronald

Filename: 20111123_HIPCAR-Barbados_UAS_Matrix_November2011.docx
Directory: C:\Documents and Settings\system12\My Documents\TRACY-
HIPCAR-FILES\Bdos - UAS\Model Policys & Legislative Texts\Drafts sent out by
Kerstin\Comparative Law Analyses 20111123
Template: C:\Documents and Settings\system12\Application
Data\Microsoft\Templates\Normal.dot
Title: Review of Universal Access and Service Reguations
Subject: ITU/ EU funded HIPCAR Project
Author: Sofie Maddens Toscano
Keywords:
Comments:
Creation Date: 22/11/2011 13:24:00
Change Number: 5
Last Saved On: 09/12/2011 08:12:00
Last Saved By: system12
Total Editing Time: 4 Minutes
Last Printed On: 09/12/2011 08:16:00
As of Last Complete Printing
Number of Pages: 46
Number of Words: 15,797 (approx.)
Number of Characters: 90,043 (approx.)