

Establishment of Harmonized Policies for the ICT Market in the ACP countries

Universal Access/Service: Model Policy Guidelines & Legislative Texts

HIPCAR

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



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Foreword

Information and communication technologies (ICTs) are shaping the process of globalisation. Recognising their potential to accelerate the Caribbean region's economic integration and thereby its greater prosperity and social transformation, the Caribbean Community (CARICOM) Single Market and Economy has developed an ICT strategy focusing on strengthened connectivity and development.

Liberalisation of the telecommunication sector is one of the key elements of this strategy. Coordination across the region is essential if the policies, legislation, and practices resulting from each country's liberalisation are not to be so various as to constitute an impediment to the development of a regional market.

The project 'Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures' (HIPCAR) has sought to address this potential impediment by bringing together and accompanying all 15 Caribbean countries in the Group of African, Caribbean and Pacific States (ACP) as they formulate and adopt harmonised ICT policies, legislation, and regulatory frameworks. Executed by the International Telecommunication Union (ITU), the project has been undertaken in close cooperation with the Caribbean Telecommunications Union (CTU), which is the chair of the HIPCAR Steering Committee. A global steering committee composed of the representatives of the ACP Secretariat and the Development and Cooperation - EuropeAid (DEVCO, European Commission) oversees the overall implementation of the project.

This project is taking place within the framework of the ACP Information and Telecommunication Technologies (@CP-ICT) programme and is funded under the 9th European Development Fund (EDF), which is the main instrument for providing European aid for development cooperation in the ACP States, and co-financed by the ITU. The @CP-ICT aims to support ACP governments and institutions in the harmonization of their ICT policies in the sector by providing high-quality, globally-benchmarked but locally-relevant policy advice, training and related capacity building.

All projects that bring together multiple stakeholders face the dual challenge of creating a sense of shared ownership and ensuring optimum outcomes for all parties. HIPCAR has given special consideration to this issue from the very beginning of the project in December 2008. Having agreed upon shared priorities, stakeholder working groups were set up to address them. The specific needs of the region were then identified and likewise potentially successful regional practices, which were then benchmarked against practices and standards established elsewhere.

These detailed assessments, which reflect country-specific particularities, served as the basis for the model policies and legislative texts that offer the prospect of a legislative landscape for which the whole region can be proud. The project is certain to become an example for other regions to follow as they too seek to harness the catalytic force of ICTs to accelerate economic integration and social and economic development.

I take this opportunity to thank the European Commission and ACP Secretariat for their financial contribution. I also thank the Caribbean Community (CARICOM) Secretariat and the Caribbean Telecommunication Union (CTU) Secretariat for their contribution to this work. Without political will on the part of beneficiary countries, not much would have been achieved. For that, I express my profound thanks to all the ACP governments for their political will which has made this project a resounding success.



Brahima Sanou
BDT, Director

Acknowledgements

The present document represents an achievement of the regional activities carried out under the HIPCAR project “Enhancing Competiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”, officially launched in Grenada in December 2008.

In response to both the challenges and the opportunities from information and communication technologies’ (ICTs) contribution to political, social, economic and environmental development, the International Telecommunication Union (ITU) and the European Commission (EC) joined forces and signed an agreement aimed at providing “*Support for the Establishment of Harmonized Policies for the ICT market in the ACP*”, as a component of the Programme “*ACP-Information and Communication Technologies (@CP-ICT)*” within the framework of the 9th European Development Fund (EDF) i.e., ITU-EC-ACP project.

This global ITU-EC-ACP project is being implemented through three separate sub-projects customized to the specific needs of each region: the Caribbean (HIPCAR), sub-Saharan Africa (HIPSSA) and the Pacific Island Countries (ICB4PAC).

The HIPCAR Steering Committee was created and chaired by the Caribbean Telecommunications Union (CTU) who provided general guidance and support to a team of consultants led by Ms. Sofie Maddens Toscano and including Mr. J Paul Morgan and Mr. Kwesi Prescod, who prepared the initial draft of this report. The document was then reviewed, finalized and adopted by broad consensus by the participants at two consultation workshops for HIPCAR’s Working Group on ICT Policy and Legislative Framework on Telecommunications matters, held in Trinidad and Tobago on 26-29 October 2009 and in Suriname on 12-15 April 2010 (see Annexes).

ITU would like to especially thank the workshop delegates from the Caribbean ICT and telecommunications ministries and regulators as well as their counterparts in the ministries of justice and legal affairs, academia, civil society, operators, and regional organizations, for their hard work and commitment in producing the contents of this report. The contributions from the Caribbean Community Secretariat (CARICOM) and CTU are also gratefully acknowledged.

Without the active involvement of all of these stakeholders, it would have been impossible to produce a document such as this, reflecting the overall requirements and conditions of the Caribbean region while also representing international best practice.

The activities have been implemented by Ms Kerstin Ludwig, responsible for the coordination of activities in the Caribbean (HIPCAR Project Coordinator), and Mr Sandro Bazzanella, responsible for the management of the whole project covering sub-Saharan Africa, the Caribbean and the Pacific (ITU-EC-ACP Project Manager) with the overall support of Ms Nicole Morain, HIPCAR Project Assistant, and of Ms Silvia Villar, ITU-EC-ACP Project Assistant. The work was carried under the overall direction of Mr Cosmas Zavazava, Chief, Project Support and Knowledge Management (PKM) Department. The document has further benefited from comments of the ITU Telecommunication Development Bureau’s (BDT) Regulatory and Market Environment Division (RME). Support was provided by Mr. Philip Cross, ITU Area Representative for the Caribbean. Pre-formatting was done by Mr. Pau Puig Gabarró. The team at ITU’s Publication Composition Service was responsible for its publication.

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Introduction

1.1. HIPCAR Project – Aims and Beneficiaries

The HIPCAR project¹ was officially launched in the Caribbean by the International Telecommunication Union (ITU) and the European Commission (EC) in December 2008, in close collaboration with the Caribbean Community (CARICOM) Secretariat and the Caribbean Telecommunications Union (CTU). The HIPCAR project is part of a global ITU-EC-ACP project encompassing also sub-Saharan Africa and the Pacific.

HIPCAR's objective is to assist CARICOM / ACP countries in the Caribbean to harmonize their information and communication technology (ICT) policies, legislation and regulatory procedures so as to create an enabling environment for ICT development and connectivity, thus facilitating market integration, fostering investment in improved ICT capabilities and services, and enhancing the protection of ICT consumers' interests across the region. The project's ultimate aim is to enhance competitiveness and socio-economic and cultural development in the Caribbean region through ICTs.

In accordance with Article 67 of the Revised Treaty of Chaguaramas, HIPCAR can be seen as an integral part of the region's efforts to develop the CARICOM Single Market & Economy (CSME) through the progressive liberalization of its ICT services sector. The project also supports the CARICOM Connectivity Agenda and the region's commitments to the World Summit on the Information Society (WSIS), the World Trade Organization's General Agreement on Trade in Services (WTO-GATS) and the Millennium Development Goals (MDGs). It also relates directly to promoting competitiveness and enhanced access to services in the context of treaty commitments such as the CARIFORUM states' Economic Partnership Agreement with the European Union (EU-EPA).

The beneficiary countries of the HIPCAR project include Antigua and Barbuda, The Bahamas, Barbados, Belize, The Commonwealth of Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

1.2. Project Steering Committee and Working Groups

HIPCAR has established a project Steering Committee to provide it with the necessary guidance and oversight. Members of the Steering Committee include representatives of Caribbean Community (CARICOM) Secretariat, Caribbean Telecommunications Union (CTU), Eastern Caribbean Telecommunications Authority (ECTEL), Caribbean Association of National Telecommunication Organisations (CANTO), Caribbean ICT Virtual Community (CIVIC), and International Telecommunication Union (ITU).

In order to ensure stakeholder input and relevance to each country, HIPCAR Working Groups have also been established with members designated by the country governments – including specialists from ICT agencies and national regulators, country ICT focal points and persons responsible for developing national legislation. The Working Groups also include representatives from relevant regional bodies (CARICOM Secretariat, CTU, ECTEL and CANTO) and observers from other interested entities in the region (e.g. civil society, the private sector, operators, academia, etc.).

¹ The full title of the HIPCAR 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). It 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).

The Working Groups have been responsible for covering the following two work areas:

1. *ICT Policy and Legislative Framework on Information Society Issues*, dealing with six sub-areas: e-commerce (transactions and evidence), privacy & data protection, interception of communications, cybercrime, and access to public information (freedom of information).
2. *ICT Policy and Legislative Framework on Telecommunications*, dealing with three sub-areas: universal access / service, interconnection, and licensing in a convergent environment.

The reports of the Working Groups published in this series of documents are structured around these two main work areas.

1.3. Project Implementation and Content

The project's activities were initiated through a Project Launch Roundtable organized in Grenada, on 15-16 December 2008. To date, all of the HIPCAR beneficiary countries – with the exception Haiti – along with the project's partner regional organizations, regulators, operators, academia, and civil society have participated actively in HIPCAR events including – in addition to the project launch in Grenada – regional workshops in Trinidad & Tobago, St. Lucia, St. Kitts and Nevis, Suriname and Barbados.

The project's substantive activities are being led by teams of regional and international experts working in collaboration with the Working Group members, focusing on the two work areas mentioned above.

During *Stage I* of the project – just completed – HIPCAR has:

1. Undertaken assessments of the existing legislation of beneficiary countries as compared to international best practice and in the context of harmonization across the region; and
2. Drawn up model policy guidelines and model legislative texts in the above work areas, from which national ICT policies and national ICT legislation / regulations can be developed.

It is intended that these proposals shall be validated or endorsed by CARICOM/CTU and country authorities in the region as a basis for the next phase of the project.

Stage II of the HIPCAR project aims to provide interested beneficiary countries with assistance in transposing the above models into national ICT policies and legislation tailored to their specific requirements, circumstances and priorities. HIPCAR has set aside funds to be able to respond to these countries' requests for technical assistance – including capacity building – required for this purpose.

1.4. This Report

This report deals with Universal Access and Service, one of the work areas of the Working Group on Telecommunications. It includes Model Policy Guidelines and a Model Legislative Text that countries in the Caribbean may wish to use when developing or updating their own national policies and legislation in this area.

Prior to drafting this document, HIPCAR's team of experts – working closely with the above Working Group members – prepared and reviewed an assessment of existing legislation on telecommunications in the fifteen HIPCAR beneficiary countries in the region focusing on three related regulatory issues: Universal Access and Service, Interconnection and Access, and Licensing. This assessment took account of accepted international and regional best practices as reflected in legislation of the Economic Community of West African States (ECOWAS), the Eastern Caribbean Telecommunications Authority (ECTEL), the European Union and other jurisdictions (Jordan, Maldives, Malaysia, Nigeria and the United States of America).

This regional assessment – published separately as a companion document to the current report² – involved a comparative analysis of current legislation on Universal Access and Service in the HIPCAR beneficiary countries and the identification of potential gaps in this regard, thus providing the basis for the development of the model policy framework and legislative text presented herein. By reflecting national, regional and international best practices and standards while ensuring compatibility with the legal traditions in the Caribbean, the model documents in this report are aimed at meeting and responding to the specific requirements of the region.

The initial drafts for these documents were prepared by a team of HIPCAR consultants led by Ms. Sofie Maddens Toscano and including Mr. J Paul Morgan and Mr. Kwesi Prescod. The documents were then reviewed, finalized and adopted by consensus by the participants at two consultation workshops for HIPCAR’s Working Group on Policy and Legislative Framework on Telecommunications (Universal Access and Service, Interconnection and Access, and Licensing), held in Trinidad and Tobago on 26-29 October 2009 and in Suriname on 12-15 April 2010 (see Annexes). Stakeholders had the opportunity to comment on the adopted documents prior to and after the workshops. This document therefore contains data and information as known in April 2010.

Following this process, the documents were finalized and disseminated to all stakeholders for consideration by the governments of the HIPCAR beneficiary countries.

1.5. The Importance of Effective Policies and Legislation on Universal Access and Service

At present, technological change is increasingly challenging the existing policies relating to universal access and service (UAS). This is 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 policy in a converging telecommunications sector.

Although there is no fixed or standard definition for universal access and service, currently established UAS policies typically seek to meet the following objectives: availability, affordability and accessibility.³ The scope of universal service differs because countries face different market conditions and must meet different objectives in order to provide un-served and under-served rural populations with universal service. Given the importance of new technologies in reaching un-served and under-served rural populations, countries around the world – including in the Caribbean – are analyzing and even looking to modify their policies by incorporating new technologies and relying on them to reach rural populations.

Forward-looking telecommunications policies can foster the use of new and innovative technologies and can be instrumental in helping countries to achieve their UAS goals.

Recently, countries have also adopted more integrated strategies for the development and financing of telecommunications services. This is particularly true in the case of universal access and financing of large infrastructure projects, including projects to extend broadband services. The reason for such an integrated approach is simple: the country must quantify the resources and investment required, and it must develop a comprehensive plan at the national level in relation to the size of the stakes.

² See “ICT Policy and Legislative Framework on Telecommunications – Universal Access and Service: Assessment Report on the Current Situation in the Caribbean” available at http://www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/

³ Rethinking Universal Service for a Next Generation Network Environment, Working Party on Telecommunication and Information Services Policies, OECD, April 2006, p. 10.

Introduction

International best practices show that key elements to achieve an effective framework to address universality include: defining the institutional framework for the definition and implementation of UAS policy and regulation; defining the scope of UAS, thereby ensuring that the services are available and accessible and that the price of communications is affordable; defining innovative mechanisms – including further regulatory reform, public-private partnership mechanisms, etc. – to achieve UAS; and identifying financing mechanisms and selecting appropriate funding mechanism for UAS (which should not be limited to the creation of a Universal Service Fund).

Section I: Model Policy Guidelines – Universal Access and Service

Following, are the Model Policy Guidelines that a country may wish to consider in relation to Universal Access and Service.

1. CARICOM/CARIFORUM COUNTRIES SHALL AIM TO INTRODUCE CLEAR LEGAL AND INSTITUTIONAL FRAMEWORKS TO SUPPORT OR ADDRESS THE CONCEPT OF UNIVERSAL ACCESS AND SERVICE

- 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.

2. CARICOM/CARIFORUM COUNTRIES SHALL ENSURE THAT KEY PRINCIPLES AND GOALS FOR UNIVERSAL ACCESS AND SERVICE ARE CLEARLY DEFINED IN THE HIGHEST LEGAL TOOL POSSIBLE

- 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.
- 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.

3. CARICOM/CARIFORUM COUNTRIES SHALL ENSURE THAT A MULTIPRONGED APPROACH IS IN PLACE TO PROMOTE UAS

- 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 multi-purpose community centres (MPCCs).

4. CARICOM/CARIFORUM COUNTRIES SHALL PROVIDE FOR ADEQUATE AND SUSTAINABLE FINANCIAL SOURCE(S) AND MECHANISM(S) TO SUPPORT UAS AND SHALL ENSURE THAT ANY SUBSIDIES ARE TARGETED

- The law clearly establishes 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 provides 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.
- Where government 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.
- The law establishes both implicit and explicit funding arrangements for UAS.
- Various mechanisms may 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.
- The law shall include 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 provides that 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.
- Where operators receive support, a clear formula is defined in the law.
- Implicit funding 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.

5. WHERE A UNIVERSAL ACCESS/SERVICE FUND IS ESTABLISHED, THE MANAGEMENT, PROJECT SELECTION MECHANISMS, CONTRIBUTION MECHANISMS, AND FUND DISTRIBUTION MECHANISMS ARE TRANSPARENT AND CLEARLY SET OUT

- 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.

Section II: Model Legislative Text – Universal Access and Service

Following, is the Model Legislative Text that a country may wish to consider when developing national legislation relating to Universal Access and Service. This model text is based on the Model Policy Guidelines outlined previously.

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PART I – PRELIMINARY

- Short Title** 1. 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*].
- Objective** 2. 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.
- Definitions** 3. 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 the oversight of universal service and or disbursement of universal service funds.
- l. 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.
- m. 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.
- n. Universal Service Target means an underserved area and/or an underserved group within the community.
- o. 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. 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.
- q. Universal service (US): every individual or household has private access to information and communications services via wireline or wireless devices.
- r. Universal service obligations: requirements that governments place on operators to offer information and communications services in all areas, regardless of economic feasibility.

PART II – UAS POLICIES AND OBLIGATIONS

UAS POLICIES AND INSTITUTIONAL FRAMEWORK

Universal
Service
Principles

4. 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 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 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.
 - f. 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.
 - g. 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.

UAS Policy
Development

5. 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 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.
- Implementation of UAS Policies**
- 6. 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 socio-economic 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;

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- 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.
- Consultation** 7. 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.
- Review of the Scope of UAS** 8. 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.
- Periods of Review** 9. 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.
- UNIVERSAL SERVICE OBLIGATIONS**
- Designation of Universal Service Providers** 10. 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.
- Obligations of** 11. A universal service provider shall

Section II

Universal Service Providers

- 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.

Universal Service Obligations for Dominant Operators

12. The NRA may impose different universal service obligations on dominant operators
- 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.

Transparency and Non-Discrimination in Designation

13. 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.

Enforcement of Obligations

14. A universal service provider who has failed to implement a universal service initiative:
- 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.

PART III – FINANCING OF UNIVERSAL ACCESS AND SERVICE

PRINCIPLES OF UNIVERSAL ACCESS AND SERVICE FINANCING

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| Principles | <p>15. Any financing of UAS should abide by the following principles:</p> <ol style="list-style-type: none"> 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. |
| Complementary Mechanisms to Achieve UAS | <p>16. 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> |
| Project Financing | <p>17. 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.</p> |
| Competitive Mechanism | <p>18. 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.</p> |
| Mechanisms to Distribute Funds | <p>19. (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> |

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- (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.
- Provision of Subsidies**
20. Subsidies, where granted for the promotion of UAS, must be targeted and may be provided using various means, including:
- 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.
- Calculating Universal Service Costs and Revenues**
21. 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.
- Recovering Net Costs of Universal Service**
22. 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:
- 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.

PROJECT SELECTION MECHANISMS

- Submission of Proposals for UAS Projects**
23. 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.
- Identification of UAS Projects by the NRA**
24. 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:

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- 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.
- Identification of Projects by the NRA** 25. Notwithstanding Regulation 24 above, the NRA may identify and solicit UAS projects through a Request for Proposals at any time during the operating year.
- Project Solicitation** 26. 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
- a. Public meetings;
 - b. Electronic and online advertisements or solicitations;
 - c. Public announcements;
 - d. Advertisements; or
 - e. Appropriate promotional activities.
- Eligibility to Bid on UAS Projects Financing** 27. 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.
- Adjudication of Multiple Bids** 28. Adjudication of multiple bids may be addressed as follows:
- 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.
- Award of Funding** 29. 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.

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- Project Implementation**
- 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.
30. (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.
- Enforcement of Project Implementation**
31. (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.

PART IV – UNIVERSAL ACCESS AND SERVICE FUNDS

PRINCIPLES

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| Principles of UASF | 32. | 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. |
| UASF Contributions | 33. | Where the Minister creates a UASF, he shall impose a system for contributions to the Fund that: <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. |
| Monies to be Paid into UASF | 34. | 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: <ul style="list-style-type: none"> a. Such amounts as may be collected from all network operators/facilities operators and service providers for the purpose of funding universal service; b. Any grant, contribution or loans from any international organisations or donors; c. Any monies appropriated by the Government for this purpose; d. Interest on monies held and penalties collected from UAS providers; and e. Any other source determined by the Minister. |
| Contributors' Reporting Requirements | 35. | 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. |

ADMINISTRATION OF UNIVERSAL ACCESS AND SERVICE FUNDS

Separate Accounts

36. 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 activities in accordance with these Regulations.

Separate Budgets

37. The NRA shall prepare and keep separate budgets for the Fund Projects and Fund Operations through accounting allocations.
- 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.
 - b. The Fund Project Budget shall be allocated to Fund Projects that have been selected and approved for financing in accordance with these Regulations.
 - c. Before the end of the financial year, the NRA shall prepare budget forecasts for the Fund for the following financial year.

Audit of the Fund Administrator

38. 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.

Reporting Requirements by the NRA

39. 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.

ANNEXES

Annex 1

**Participants of the First Consultation Workshop for HIPCAR Project Working Groups
dealing with Telecommunications Acts – Universal Access & Service;
Access & Interconnection; and Licensing.
Port of Spain, Trinidad and Tobago, 26-29 October 2009**

Officially Designated Participants and Observers

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Annex 2

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