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

Universal Access and Service in Southern Africa

Assessment Report

HIPSSA Harmonization of ICT Policies in Sub-Saharan Africa

giz Internationales Institut für Journalismus
On behalf of Federal Ministry for Economic Cooperation and Development
ITU

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In response to both the challenges and the opportunities of 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 (ITU-EC Project) 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). For the sake of clarity, hereafter this agreement will be referred to as the 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: Sub-Saharan Africa (HIPSSA), the Caribbean (HIPCAR), and the Pacific Islands Countries (ICB4PAC).

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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 SADC region while also representing international best practice.

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Summary

Introduction

This Assessment Report and recommendations for Revised Guidelines have been prepared under the HIPSSA project. The report provides a critical assessment of existing ICT legislation and regulatory interventions and practices across the SADC region in relation to international best practices and recommends an update of SADC Guidelines to bring these Guidelines in line with national and international developments.

Part II of this Report provides suggestions and recommendations on how the current 'Policy Guidelines on Universal Access / Service for Telecommunications Services in SADC[1]' may be modified to reflect market realities, accommodate competition and convergence and reflect a more comprehensive approach to universal access and service.

These recommendations are presented in tabular format under Part II, with the current SADC Guidelines presented alongside a summary of the key issues and components of international best practice, and with recommendations as to how the SADC Guidelines are updated to incorporate such key issues. Recommended changes are in each case indicated by underlining.

Part III of the Report provides an overview of how the SADC Guidelines have been implemented in the various countries, together with a discussion and analysis of how key elements have been implemented in countries generally identified as exemplifying best practice as regards those issues. A selection of best practice examples from around the world has been done, which identifies key factors and regulatory trends relating to universal access and service (UAS), its mandate, scope and definition, along with regulatory reform measures designed to achieve universal access and service as well as financing mechanisms and the management of funds. The Report also highlights the varying uses of regulatory reforms of the market, the imposition of universal service obligations such as roll-out targets, or the utilisation of civil sector driven public-private-partnerships and the like in order to achieve Universal Access and Service in jurisdictions ranging from states within the EU, India, Singapore, and Latin America.

The major themes identified in **Part III** of the Report include:

- Legal Mandate and Institutional Framework;
- Objectives, Principles and Scope of Universal Access and Service;
- Variety of Strategies and Policies to Promote Universal Access and Service;
- Monitoring, Enforcement and Sanctions of USOs;
- Universal Access and Service Financing;
- Universal Service Fund: Principles;
- Quality of Service for Universal Access and Service;
- Consumer Policy and Universal Service.

[1] TRASA (2002) 'Policy Guidelines on Universal Access / Service for Telecommunications Services in SADC', Telecommunications Regulatory Association of Southern Africa, Gaborone, February 2002

Summary

Key Issues

Legal Mandate and Institutional Framework

Key elements of international best practice to underpin and create a clear legal mandate and institutional framework for universal access and service policy can be summarised as follows:

Legal Mandate: there is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS);

Good Governance: good governance principles are 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;

Policy Co-ordination: the legal mandate provides for co-ordination of policies at national level (ensuring, for example, that UAS policy is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDGs, cyber strategies, etc.);

Range of Services: the legal mandate and institutional framework cater for an extended range of services, such as the Internet, broadband and broadcasting services in addition to fixed and mobile voice services;

Consultation: the legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders;

Accountability: The law clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and clearly specifies its mandate.

Achieving universal access and service to ICTs is a challenge for all countries. In order to ensure that universal access and service is a central part of the ICT policy framework 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 ICT sector regulation.

Universal access and service policy and its institutional framework should therefore be captured in national legislation, regulations, licences or Ministerial policy statements, which establish the framework and limitations within which the policy must be implemented. Such a foundation is necessary to ensure the credibility, authority and enforceability of the policy, as well as to ensure that its terms are consistent with other national priorities and on-going programmes.

It is also essential to ensure that the mandate of actors is clear so that they can effectively define the principal 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.

There is, however, 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 via the Universal Access and Service Fund.

Once basic measures have been defined and implemented in the telecommunication sector, including opening the sector up to competition and establishing an independent regulatory agency, it is also the responsibility of policy-makers to monitor their implementation by conducting reviews at regular intervals and making any adjustments that may be needed. This is because a Universal Access and Service strategy needs to be reviewed and fine-tuned from time to time in the light of social, commercial and technological developments, if it is to be effective.

Summary

Objectives, Principles and Scope of Universal Access and Service

Key elements of international best practice illustrating clear objectives, principles and scope of universal access and service policy can accordingly be summarised as follows:

UAS Goals: key principles or goals for UAS are clearly defined in the law or other national policy document;

Access vs Service: a clear distinction is drawn between Universal Access and Universal Service;

Service Targets: a clear definition is given of specific ICT services and ICT applications that must be provided and to whom they must be provided;

Range of Services: services beyond fixed and mobile voice are included, which could include Internet, broadband and broadcasting;

Periodic Review: the periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for.

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 un-served or underserved, as well as at low-population density areas where provision of services is not commercially attractive or 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.

Universal Service generally refers to service at the individual or household level – typically a telephone in each home – whereas Universal Access refers to a publicly shared level of service which is generally provided through public payphones or public Internet access points.

Ideally, a clear distinction must be drawn between Universal Access and Universal Service. The targets and range of UAS obligations are very broad because developed and developing countries face different market conditions and must meet different objectives in order to provide un-served and underserved rural populations with services.

A clear definition needs also to be given of specific ICT services or ICT applications that must be provided and to whom they must be provided, and this should include services beyond fixed and mobile voice. Radio and television broadcasting now also need to be included in the definition of the scope of UAS, due to developments such as convergence, Internet broadcasting and the bundling of broadcast, Internet and telephony services. Universal access and service should also evolve to include Internet connectivity and, increasingly, broadband.

Services and targets need to be selected carefully. This is not an easy task, as technology changes, market realties change, and expectations of end-users change. Targets need to be feasible so that they can accommodate market developments. The policy itself should allow for a process of review and update so that it may adjust targets. Targets should also be in line with the goals set by the World Summit on the Information Society (WSIS) process in support of the Millennium Development Goals (MDGs).

Summary

Variety of Strategies and Policies to Promote Universal Access and Service

Key elements to illustrate variety of strategies and policy mechanisms to achieve Universal Access and Service can accordingly be summarised as follows:

USOs: the imposition of obligations upon designated licensees to increase access through rolling out networks and providing services;

Liberalisation: the introduction of competition with liberalisation of appropriate market segments (such as CPE, paging, ISPs, data communications, VANS, LLU, international gateways and undersea cables, and wholesale fibre);

Strong Regulatory Framework: enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing

Funding: the definition of a range of UAS financing mechanisms, including the establishment of a Universal Service Fund;

Supply-side Innovation: implementing a mix of complementary and innovative strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation;

Demand-side Innovation: the establishment of a mix of complementary and innovative strategies to stimulate demand for access to ICT networks and services.

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 should 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 favour 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 following mechanisms that directly or indirectly aim to increase investments and access to telecommunications infrastructure in high-cost rural and low-income areas have been shown to be successful, either in isolation or in combination:

- Universal Service Funds (USFs) that provide partial subsidies for programmes largely aimed at stimulating private sector provision of infrastructure in rural or un-served regions;
- Other financing methods and project initiatives by national, state and local governments, cooperatives, NGOs and an increasing number of private operators who are also putting in place programmes aimed at expanding coverage in high cost rural areas and at increasing demand among lower income consumers;
- State-mandated and controlled approaches using cross subsidies and other financing mechanisms aimed at state-owned companies.

Some degree of government intervention may be required to enable and complement the market. Innovative demand-side strategies mean institutional demand creations (e-government, government as major user, provision of access to ICT in public facilities or anchor institutions such as schools, libraries, health and community centres), e-applications (e-health, e-education, etc.), definition of requirements and provisions for persons with special needs (person with disabilities, youth and women, elderly, etc.), government subsidy and voucher programmes, application of preferential or discounted tariffs.

Any guidelines should therefore also have a user focus so that available funds can finance projects for children, women, people with disabilities, schools and other public facilities. This may include government measures to lead demand development as a major user. When governments (national, regional, local)

define policies for uptake, they also become major users of communications services (e.g. school connectivity and other education projects, government intranet projects, e-procurement, online taxes and public records). Articulating government demand can drive uptake and reduce commercial risk of investments.

Monitoring, Enforcement and Sanctions of USOs

Key elements to ensure clarity of universal access and service obligations (definition, monitoring, enforcement, sanctions can accordingly be summarised as follows:

Scope of USOs: there are specific criteria for determining which operators have or are subject to Universal Access and Service obligations;

Review Process: USO criteria and their implementation and impact are subject to a defined and regular process of review;

Differentiation: 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;

Publication of USOs: comprehensive details of Universal Access and Service obligations are specified in each operator's license and published by the designated agency;

Monitoring: comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator or designated agency by the operator;

Publication of Progress: comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator or designated agency;

Enforcement: if an operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view.

To assist with the monitoring of universal access and service obligations (USOs), the reporting obligations of the UAS service provider must be carefully considered. These requirements relate to the project implementation schedule, which is often related to a network being rolled out and becoming operational, and then to the quality of service requirements. USO monitoring further requires the power to:

- Conduct random and routine checks of field performance to verify operating statistics and fulfilment of contractual obligations; and
- Prepare consolidated monthly internal reports to summarise project progress, achievements, explanations and reasons for variance from norm, and recommended further action.

Any criteria included in the UAS licence or service contract, are used as a basis for the monitoring of progress and to enforce the minimum stipulated quality standards on operators and service providers providing UAS.

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. 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.

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 on-going 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.

Summary

Universal Access and Service Financing

Key elements to ensure a variety of mechanisms to finance universal access and service can accordingly be summarised as follows:

Range of Mechanisms: the law establishes a variety of financial mechanisms to support provision of UAS;

Funding Criteria: the law ensures that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral;

Source of Funds: the law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues, government budget, etc. with subsidy payments into the Fund at reasonable intervals;

Cross subsidies: is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?

Implicit Funding: does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges? Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?

Smart Subsidies: where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF.

The financing of Universal Access and Service has gone through various stages, ranging from the application of revenues from cross-subsidies to finance non-profitable areas under a monopolistic scenario, to the creation of Universal Service Funds funded solely from operator levies so as to be able to finance Universal Access and Service projects in a competitive market.

Universal Service Funds have been established in many countries to finance network expansion, especially in difficult and unprofitable areas. Several trends have, however, been observed since the establishment of Universal Service Funds for the development of universal access:

- Mobile telephony has overtaken fixed telephony through its ability to cover remote rural areas;
- The concept of access has evolved from a focus on connecting remote areas to basic services towards the introduction of more advanced services for the same areas, including the Internet and even broadband access;
- Funding for the development of ICT services has been integrated into actions that could be financed by universal service financing;
- The development of ICT applications and local content increases the use (and viable) access available to rural populations.

Recently, countries have also adopted more integrated strategies for the development and financing of ICT services. This is particularly true in the case of universal access, and financing of large infrastructure projects, including projects to fund broadband, since implementation of such projects has generally been seen to require the involvement of both private sector financing and public authorities.

Good international practice shows that inclusion of private sector through Public Private Partnerships (PPPs) and profit-sharing can provide a number of benefits: access to private finance, reduced operational risk for the public sector, faster delivery of capital projects, project management skills, entrepreneurship, and innovation. The extent of private sector participation can range from sharing risk on a small scale to almost total control of the property and project management.

Countries should therefore not focus solely on the creation of a Universal Service Fund, but rather see this as one amongst a range of tools to finance universal access and service. Other public finance mechanisms

such as loan guarantees and public private partnerships (PPPs) to enhance and target investments into priority areas in need of special finance may be applied and achieve Universal Access and Service more effectively.

Universal Service Fund: Principles

Key elements to ensure establishment and good governance of UASF can accordingly be summarised as follows:

USF: the law provides for the establishment of a Fund, where one is required, and this decision is linked to a process of analysis of the market realities and consultation of stakeholders;

Accountability: the law clearly identifies who is responsible for the management and operation of the Fund – preferably the regulator – and should ensure the independence of this entity through clear regulatory provisions;

Financing of USF: contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals, supplemented by alternative and collateral contributions;

Transparency: the fund is audited bi-annually, and audits, and financial and activity reports are publicly available;

Project identification: the expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects – subject to a carefully-researched needs analysis;

Project Selection: Competitive least subsidy bidding is used as the basis for selecting individual projects.

Universal Service Funds are being used in some competitive markets to supplement market-based policies, and address access gaps and market failures in remote and under-served locations.

The WSIS Task Force on Financial mechanisms for ICT for Development (ICT4D), which investigated the scope and adequacy of existing financial mechanisms for ICT4D, found that national universal service funds can play an important role in lowering the costs of delivery of services to identified target areas, but may require substantial institutional and implementation capacity to succeed. However, there are some legitimate and understandable concerns regarding UASFs, fuelled mostly by a few unfortunate examples. Also, there have been concerns raised over the complexity of establishing and managing a UASF. Negotiating fair UAS contributions for all operators, which are equitable between all and accepted as fair, is not necessarily an easy feat.

Although many governments have seen the establishment of such Funds as the most efficient way of financing universal access and service, setting up a fund properly is not an easy task. Most important is to make sure that the WTO requirements of transparency and fairness are implemented, as well as the requirement that the revenues collected are used for development of the telecommunication sector only.

One of the main questions dominating the transparent and effective management of Universal Service Funds relates to the entity or authority which will have responsibility for managing its operations, and the definition of its structure and mandate. Some countries have opted to make the NRA responsible for the administration of the Fund, whereas others have created independent third-party agencies dedicated to this function.

Whatever the option chosen, the main issues of importance in relation to the establishment and management of the Fund include:

- The entity or government body charged with day to day management of the fund is independent and works according to transparent procedures;
- There is an oversight entity/body, or requirement for the fund manager to report to the regulator or ministry;

- There are financial transparency for the USF, including accounting separation and standards;
- Administrative costs of the fund are kept to a minimum.

Mechanisms also need to be put in place to make universal service funds accessible to a wider range of telecommunications service providers. Limiting access of funds only to a specific category of licensees or to licensed operators, for example, can create barriers that discourage the implementation of new technologies to provide service in un-served or underserved areas.

In addition, the development and presentation of project proposals for universal service funds consideration should not be restricted only to the fund authority or to telecommunications providers, but instead are open to all entities with an interest in contributing to the fulfilment of universal service and access. A system where multiple parties can submit project proposals allows all interested parties to contribute in achieving universal service obligation objectives. Having multiple sources for project proposals can provide a more realistic vision of the needs and conditions of the market, such as what type of service is required by localities and which technology is best suited, and are more likely to result in creative and resourceful project solutions.

The Universal Service Fund should not only support a country's present universal service objectives, but also be able to adapt to the demands and trends of a converging communications sector by fostering the use of new and innovative technologies to achieve future universal service obligation goals.

Quality of Service for Universal Access and Service

Key elements to ensure the proper implementation of QoS in relation to universal access and service can accordingly be summarised as follows:

QoS requirements: QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing);

QoS Monitoring: operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available;

Range of Services: QoS benchmarks are established in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting);

QoS Review: QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.

Since the introduction of competition in the telecommunications market, many countries have put in place a regime to ensure every person can receive a basic set of high quality ICT services, no matter where they live, at an affordable price. As there is in general a constraint on prices to ensure affordability of Universal Access and Service, the Universal Access and Service operators can indeed increase profit by lowering Quality of Service (QoS) at a retail level. Therefore, QoS is clearly identified as a key issue in conjunction with universal access and service.

Consequently, QoS standards with associated benchmarks and targets are developed, taking into account the following:

- The current state of the sector and current levels of UAS in the country;
- The resources available and required for achieving UAS targets;
- Financial sustainability after implementation;
- The feasible quality of service (for uniform quality countrywide);
- The way quality of service has been set/assessed so far;

- Sub-regional regulatory frameworks; and
- Planned periodic reviews in light of technological and market developments.

The national regulatory authorities must set performance targets for undertakings with universal service obligations and monitor compliance with these targets by designated undertakings. Designated undertakings for universal service must publish adequate up-to date information concerning their performance in the provision of universal service, based on quality parameters. If quality of service parameters are developed for disabled end-users and consumers, NRAs may specify these additional quality of service standards for assessing the performance of undertakings in relation to services provided to disabled end-users and consumers.

Consumer Policy and Universal Service

Key elements to ensure inclusion of consumer protection policy in support of universal access and service can accordingly be summarised as follows:

Charters: consumer protection requirements (eg customer service charters) are specified, publicised and binding;

Channels: channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures;

Information: operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation;

Surveys: consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available;

Scope: consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting);

Review: consumer protection criteria and requirements are subject to regular review with stakeholder participation.

In the ICT sector, the development of consumer protection regulations is common and is directed at establishing operators' obligations regarding their customers. Operators' obligations include, but are not limited to, items such as: timely and accurate billing; customer contract policies and procedures; protection of consumer privacy; terms of reference for suspension of service; and procedures necessary to respond to and resolve consumer complaints.

More and more countries are defining consumer protection measures in relation to universal service in particular. Important within this context is to have clear procedures which are widely published and easily available to consumers.

Key factors to consider when reviewing consumer protection issues are:

- Does the legislation address ICT sector-specific consumer protection issues?
- Does this legislation clearly define consumers' and operators' rights and obligations or establish processes for consumer dispute resolution?
- Are consumer protection functions and processes for their enforcement clearly specified in the law or regulation?
- What are the possible sanctions or liabilities for breaching consumer protection obligations in the telecommunications sector? Have they been imposed in the recent past?
- What authority controls consumer protection related issues in the ICT sector?

- Have specific consumer protection regulations been adopted for the ICT sector (e.g., consumer and operator rights and obligations, consumer dispute resolution mechanisms, etc.)?
- What are the sanctions applicable to operators found to have breached consumer protection obligations (e.g., fines, damage awards, reimbursement/credits for monies overpaid, etc.)?
- Does the law mandate the use of standard form contracts for the provision of services?
- Do ICT service contracts require prior approval from the regulator or another authority?
- If so, is there a clearly defined process to obtain such approval?

List of Acronyms

3G	3rd generation wireless communications network
ACA	Australian Communications Authority
ACE	Africa Coast to Europe undersea cable
ACMA	Australian Communications and Media Authority
AISI	African Information Society Initiative
ANRT	L'Association nationale de la recherche et de la technologie
ARPTC	Autorite de Regulation de la Poste et des Telecommunications du Congo
AUSAFA	African Universal Service and Access Fund Association
BEREC	Body of European Regulators for Electronic Communications
BIP	Broadband Initiatives Programme
BTOP	Broadband Technology Opportunities Programme
BOI	Board of Investment
BOT	Build, operate and transfer
BPO	Business process outsourcing
BTA	Botswana Telecommunications Authority
BTO	Build, transfer and operate
BTOP	Broadband Technology Opportunities Programme
BTRC	Bangladesh Telecommunications Regulatory Commission
BTTB	Bangladesh Telegraph and Telephone Board
Capex	Capital expenditure
CDMA	Code Division Multiple Access
CGSUT	Comité de Gestion du Service Universel de Télécommunications
COMESA	Common Market for Eastern and Southern Africa
CONATEL	*Commission Nacional de Telecomunicaciones Ecuador*
CPE	Customer premises equipment
CPT	Peruvian Telephony Company
CRASA	Communications Regulatory Association of Southern Africa
CRAN	Communications Regulatory Authority of Namibia
DCC	Centros Comunitarios Digitales
DDSO	Digital data service obligation
DSL	Digital subscriber line
DRC	Democratic Republic of the Congo
DSRP	Document de Stratégie pour la Réduction de la Pauvreté

List of aAcronyms

E1	A European framing specification for the transmission of 32 DS0 (64 kb/s) digital data streams.
EASSy	Eastern Africa Submarine Cable System
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
ECTEL	*Eastern Caribbean Telecommunications Authority*
EIB	European Investment Bank
EIRP	Equivalent isotropically radiated power
ENTEL	National Telecommunications Enterprise
ETSI	European Telecommunications Standards Institute
EU	European Union
EV-DO	Evolution-Data Optimized or Evolution-Data only
FCC	Federal Communications Commission
FITEL	Service Investment Fund in Telecommunications
FONCODES	Social Development Cooperation Fund
FSUT	Fonds du service universel des télécommunications
FTNS	Fixed telecommunication network services
FTRA	Future Technology Research Association International
FTTH	Fibre to the home
GMPCS	Global Mobile Personal Communications by Satellite
GSM	Global System for Mobile Communications
HIPSSA	Harmonization of ICT Policies in Sub-Sahara Africa
HKTC	Hong Kong Telephone Company
HSDPA	High-Speed Downlink Packet Access
IAM	Itissalatt Al Maghreb, aka Maroc Telecom
IAP	Information access point
IC3	Internet and Computing Core Certification
ICTs	Information and Communications Technologies
ICT4D	ICT for development
ICT4E	ICT for education
ICTA	Information and Communication Technologies Authority of Mauritius
IFC	International Finance Corporation
IMT-2000	International Mobile Telecommunications for the year 2000
INACOM	Instituto Angolano das Communicacoes
INCM	Instituto Nacional das Communicacoes de Mocambique
INDH	Initiative Nationale de Développement Humain
INEI	Institute of Statistics and Informatics

List of aAcronyms

IP	Internet protocol
ISP	Internet Service Provider
ISDN	Integrated Services Digital Network
IXP	Internet exchange point
ITA	Invitation to apply
ITU	International Telecommunication Union
IXP	Internet exchange point
KPIs	Key Performance Indicators
LCA	Lesotho Communications Authority
LLU	Local loop unbundling
LSM	Living Standard Measure
LTE	Long Term Evolution
MACRA	Malawi Communications Regulatory Authority
MAP	Madagascar Action Plan
MAP	Millennium Action Plan
MDDA	Media Development and Diversity Fund
MDGs	Millennium Development Goals
MoU	Memorandum of understanding
MPCC	multi-purpose community centre
MT	Mauritius Telecom
MTN	Mobile Telephone Networks
NCC	Namibia Communications Commission
NCC	Nigerian Communications Commission
NDD	Network design document
NEPAD	New Partnership for Africa's Development
NICI	National Information and Communication Infrastructure
NRA	National regulatory authority
NGN	Next-generation network(s)
NGO	Non-governmental organisation
NTIA	National Telecommunications Information Administration
OBA	Output-based aid
OCPT	Congolese Postal and Telecommunications Office
OMERT	Office Malagasy d'Etudes et de Régulation des Télécommunication
Opex	Operational expenditure
OSIPTEL	Organismo Supervisor de Inversión Privada en Telecomunicaciones
PARPA	Action Plan for the Reduction of Absolute Poverty

List of aAcronyms

PIAP	Public Internet Access Point
PNTIC	Politique Nationale des Technologies de l'Information et de la Communication
PoP	Point of presence
POTRAZ	Postal and Telecommunications Regulatory Authority of Zimbabwe
PPP	public-private-partnership
PPSI	Places of preferential social interest
PRI	Primary rate interface
PRSAP	Poverty Reduction Strategy and Action Plan
PSMP	Public Sector Management Programme
PSTN	Public switched telecommunications network
QoS	Quality of service
RAPID	Regional Activity to Promote Integration through Dialogue and Policy Implementation
RCDF	Rural Communications Development Fund
RCSA	Regional Centre for Southern Africa
RFP	Request for proposal
RUS	Rural Utilities Service
SADC	Southern Africa Development Community
SAFE	South Africa Far East undersea cable
SARI	Sustainable Access in Rural India
SAT-2	South Atlantic 2 undersea cable
SAT-3	South Atlantic 3 undersea cable
SDDSO	Special digital data service obligation
SMEs	Small and medium mnterprises
SMMEs	Small, medium and micro enterprises
SPEED	Smart Programme on Economic Empowerment and Development
SUBTEL	Subsecreteria de Telecomunicaciones Gobierno de Chile
TCM	Total cost management
TCO	Total cost of ownership
TCRA	Tanzania Communications Regulatory Authority
TIO	Telecommunications Industry Ombudsman
TRAI	Telecom Regulatory Authority of India
TRASA	Telecommunications Regulatory Association of Southern Africa
TSO	Telecommunications service obligation
TTCL	Tanzania Telecommunications Company Limited
UCC	Uganda Communications Commission
UA	Universal access

List of aAcronyms

UAS	Universal access and service
UASF	Universal Access and Service Fund
UCAF	Universal Communications Access Fund
UNDP	United Nations Development Programme
US	Universal service
USA	Universal Service Agency (USA)
USF	Universal Service Fund
USO(s)	Universal service obligation(s)
USOF	Universal Service Obligation Fund
USPF	Universal Service Provision Fund
UPTC	Uganda Posts and Telecommunications Corporation
USP	universal service provider
UTICT	Unidade Technica de Implementacão da Politica de Informatica
UTL	Uganda Posts and Telecommunications Corporation
VANS	Value-added network services
VoIP	Voice over Internet protocol
VSAT	Very small aperture terminal
WACS	West Africa Cable System
WASC	West Africa Submarine Cable
WATRA	West African Telecommunications Regulators Association
WCDMA	Wideband Code Division Multiple Access
WiMAX	Worldwide Interoperability for Microwave Access
WLAN	Wireless local area network
WSIS	World Summit on the Information Society
WTO	World Trade Organisation
X25	a packet-switched data network standard
ZICTA	Zambia Information and Communications Technology Authority

Glossary

Broadband	Internet access with a high capacity, usually 512 kbit/s or more in one or both directions. Fixed broadband is implemented through technologies such as digital subscriber line (DSL), cable modem, fibre to the home (FTTH), metro ethernet, wireless local area networks (WLAN), etc. Mobile broadband is implemented through technologies such as wideband CDMA, HSDPA, CDMA 1xEV-DO, etc.
Convergence	A term used to describe a variety of technological and market trends in the ICT sector involving the blurring of previously distinct lines between market segments such as cable television, telephony and Internet access, all of which can now be provided through a variety of different network platforms
Collocation	Facility-sharing in which the incumbent operator houses communications equipment of competitive operators to facilitate connectivity to end users
COSITU	ITU model for the Calculation of Costs, Tariffs and Rates for Telephone Services
Customer	a person who receives and pays for an ICT service over a period of time under an agreement with or pursuant to terms and conditions established by the operator with approval of the National Regulatory Authority
Cybercafé	a place where one can use a computer with Internet access for a fee, usually per hour or minute, and which may or may not serve as a regular café as well. Also known as an Internet café.
Data communications	digital transmission of information usually between computers
Dominant operator	a regulatory classification of an operator that has the largest market share in a given market segment or that is otherwise able to exercise significant market power in the same or other market segments
EV-DO	Evolution-Data Optimised or Evolution-Data Only, a 3G high speed wireless broadband standard
Harmonisation	the dynamic process of establishing mutually complementary policies, legislation, rules, standards, practices or systems between member states on the basis of agreed minimum requirements
Information access point	an Internet access point, with the emphasis on information seeking, similar to a cybercafé or a telecentre
IMT-2000	3rd generation International Mobile Telecommunications standard for mobile phones and mobile telecommunications services fulfilling specifications by the ITU
Incumbent operator	the existing operator in a market when it is opened to competition
Infrastructure or Network	an integrated system of facilities, which comprise the facilities, used to provide one or more info-communications services

Glossary

Interconnection	the physical and logical connection of two operator networks thereby allowing customers of one network to connect with customers of the other, or to access services provided from the other
Interface	the technical characteristics that allow two operator networks that are interconnected to understand the technical operation of the other in order for services to interoperate across the interconnection boundary
Internet	Interconnected global networks that use the Internet protocol
Interoperability	the technical features of a group of interconnected networks, which ensure end-to-end provision of a given service in a consistent and predictable way
LTE or Long Term Evolution	latest mobile network next-generation standard beyond 3G, a project of 3rd Generation Partnership Project (3GPP)
LLU or Local loop unbundling	the process of requiring incumbent operators to open the last mile of their legacy networks to competitors
Non-discrimination	a condition by which an operator, engaged in the provision of ICT services, shall not apply less favourable technical and commercial conditions on any competitor than what it would apply to itself, its subsidiaries or its affiliates in delivery of services.
NGN or Next-generation Network	A broad term for a certain kind of emerging computer network architectures and technologies. It generally describes networks that natively encompass data and voice (PSTN) communications, as well as (optionally) additional media such as video.
NRA or National Regulatory Authority	a public authority or government agency responsible for exercising autonomous authority to monitor and regulate the provision of ICT infrastructure, services and content in the public interest and in accordance with a defined legal and policy mandate
Number portability	The ability of a customer to transfer an account from one service provider to another without requiring a change in number
Operator	an entity that provides ICT infrastructure, networks, services or content
Pay or Play	a mechanism whereby licensees may opt to fulfil their Universal Service Obligations (USOs) through implementation of approved universal access and service projects or contributions to agreed financial mechanisms
Period of Exclusivity	a period of monopoly whereby an operator(s) is given conditions to provide certain services
PSTN or Public switched telecommunications network	a fully interconnected and integrated system of telecommunications consisting of various means of transmission and switching, utilised to provide basic telephone services to the general public
Public telecommunications services	telecommunications services provided to the general public or to a class of persons so as to be generally available
QoS or Quality of service	A measure of network performance that reflects the quality and reliability of a connection. QoS can indicate a data traffic policy that guarantees certain amounts of bandwidth at any given time, or can involve traffic shaping that assigns varying bandwidth to different applications

Glossary

Resale	the offering to users or customers for profit of ICT services obtained from another ICT service provider
Subscriber	any person who subscribes to the service or any part thereof, provided by an operator
Tariffs	any charges raised by an operator for ICT infrastructure, services or content
Telecentre	a public place where people can access computers, the Internet, and other digital technologies that enable them to gather information, create, learn, and communicate with others while they develop essential digital skills
Telecommunications	any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choosing
Transparency	requires that network operators will make publicly available either the interconnection agreements or reference interconnection offers.
Universal access	a policy of government to make ICT infrastructure and services available, at affordable prices, to as many people as possible through common points or end-user facilities such as libraries, schools, health-centres, community centres, public call offices and pay-phones. This policy also applies to advanced information services, such as the provision of Internet services and broadband access, and applications such as tele-education, tele-medicine and electronic commerce
Universal service	a policy of government to make ICT infrastructure and services, including advanced ICT infrastructure and services, available throughout the country at affordable prices so that they are either available or easily accessible to anyone whenever they are needed, regardless of geographical or physical location, with due regard to people with special needs
UAS or Universal access and service	an umbrella term, loosely covering both universal access and universal service
UASF or Universal Service and Access Fund	a fund into which contributions from operators and other sources are paid for the purpose of providing basic and advanced ICT infrastructure and services to underserved areas, communities or individuals who cannot afford such services on their own, in the pursuit of the goal of universal access and service
USA or Universal Service Agency	an institution recommended to be established under either the Ministry or the Regulatory Authority to design universal service strategies and policies and monitor their implementation
USO(s) or Universal service obligation(s)	mandatory stipulations imposed on operators / licensees, requiring, inter alia, network rollout or service provision to under-serviced areas and communities
VANS or Value-added network services	ICT services provided over public or private networks which, in some way, add value to the basic carriage, usually through the application of computerized intelligence

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Part 1

INTRODUCTION

Part 1

This Assessment Report and Revised Guidelines have been prepared under the HIPSSA project which provides for a critical Assessment Report of existing Telecoms Acts in the region covering the work area as compared to existing texts and international best practices and an update of SADC Guidelines to bring these Guidelines in line with national and international developments.

Part II of this Report provides suggestions on how the SADC Guidelines may be modified to reflect market realities, accommodate competition and convergence and reflect a more comprehensive approach to universal access and service.

Part III provides an overview of how the SADC Guidelines have been implemented in the various countries as well as how key elements have been implemented in countries generally selected as best practices as regards those issues. A selection from around the world has been done which identifies key factors and regulatory trends relating to universal access and service (UAS), its scope and definition, regulatory reform measures to achieve universal access and service as well as financing mechanisms and the management of funds. The Report also highlights the varying uses of regulatory reforms of the market, utilization of licensing obligations such as roll out targets, or through civil sector driven public-private-partnerships, and the like to achieve Universal Access/ Service in jurisdictions ranging from states within the EU, India, Singapore, and Latin America.

The major themes identified in Part III of the Report include:

- Legal Mandate and Institutional Framework
- Objectives, Principles and Scope of Universal Access and Service
- Variety of Strategies and Policies to Promote Universal Access and Service
- Monitoring, Enforcement and Sanctions of USOs
- Universal Access and Service Financing
- Universal Service Fund: Principles
- Quality of Service for Universal Access and Service
- Consumer Policy and Universal Service

Part 2

REVISED SADC GUIDELINES ON UNIVERSAL ACCESS AND SERVICE

Part 2

This Section makes recommendations on changes to the SADC Guidelines to bring them in line with international best practices, and in order to accommodate changes in the ICT sector, better reflect market realities, and to provide a more comprehensive approach to universal access and service.

These recommendations are presented in tabular format below.

In column 1 of the table we have presented the original SADC Guidelines, as they currently stand. Text that is recommended to be changed is in each case underlined for emphasis.

Column 2 summarises the key issues and components of international best practice that are discussed at length in each subsection of Part III of the report below, and analysed in relation to the current state of play in each of the CRASA member countries. These key elements provide the rationale as to why certain of the provisions in the Guidelines should change.

Column 3 then has recommendations as to how the SADC Guidelines are updated. **Recommended changes are in each case underlined so as to draw attention to them.**

SADC GUIDELINES	KEY ELEMENTS TO BE INCORPORATED	SUGGESTED MODIFIED GUIDELINES
PREAMBLE		
SECTION 1: PREAMBLE 1.1 The SADC Protocol on Transport, Communications and Meteorology ("The Protocol") and the SADC Telecommunications Policies and Model Bill provide essential guidance towards the harmonisation of policy and therefore, of telecommunications development across the region. 1.2 The dynamism and speed of technological development in the telecommunications industry, which create new challenges and opportunities, require further harmonisation of policy, particularly policy for universal access/service. 1.3 The development of telecommunications infrastructure can no longer be taken as a goal in itself, but as a catalyst for enabling information and communications for everyone. Access to information and communications will enhance community participation in social and economic development, by providing opportunities for learning, acquiring and sharing of information and for commercial activities. 1.4 Universal access/service needs to be redefined in the context of the advancement of the information and communications sector in the world and the new business environment.	**Need to include issues such as:** • **Strategic fit: setting universal access and service targets in the context of the country's development strategy. (NEW)** • **Target population: who are to benefit? Linkages to growth, employment, inclusion. (NEW)** • **Affordability: how much are users expected to pay?** • **Meeting the needs of other sectors (e.g. education, health, government administration).**	SECTION 1: PREAMBLE 1.1 The SADC Protocol on Transport, Communications and Meteorology ("The Protocol") and the SADC Telecommunications Policies and Model Bill provide the basis for the harmonisation of policy across the broad information and communications technologies (ICT) sector, which lays the foundation for integrated ICT development across the region. 1.2 The dynamism and speed of technological development in the ICT sector create both challenges and opportunities, which require further harmonisation of policy, particularly policy for universal access and service (UAS). 1.3 Technological convergence in the ICT sector progressively brings together services, applications and content that were previously distinguished as telecommunications, broadcasting and information technology, and thus requires an increasingly integrated approach. 1.4 The development of ICT infrastructure and services can no longer be seen as a goal in isolation but is integrally linked to the implementation of development strategies for both individual countries and across the region as a whole. It forms a basis and provides an essential tool to strengthen interventions in education, health, housing, agriculture, governance and more.

1.5 The purpose of these policy guidelines is to guide Member States in their effort to implement their own national policy guidelines for universal access/service.		1.5 Ensuring affordable access to information and communications for everyone is a key enabler to improve the quality of lives and livelihoods through facilitating social and economic development, by providing opportunities for learning, for the acquiring and sharing of information and knowledge, for entrepreneurship and commercial activities.
1.6 To serve as a model for harmonisation of universal access/service policy in SADC Member States.		1.6 Widespread and affordable access to ICTs is also a key to promoting social inclusion, and to bringing the benefits of development to the marginalised and disadvantaged members of our societies, including the poor and the unemployed, women and the disabled.
1.7 To create greater certainty in the policy and regulatory environment for SADC countries.		1.7 The purpose of these policy guidelines is to assist and guide Member States in their efforts to update and more effectively implement their own national policy guidelines and interventions for universal access and service in the ICT sector.
1.8 To promote good governance as indicated in the SADC Protocol, and to reinforce the need for good governance practice across SADC for government, operators and small, medium and micro enterprises (SMMEs).		1.8 These policy guidelines are intended to serve as a model for harmonisation of universal access and service policy in SADC Member States. 1.9 These policy guidelines are intended to create greater certainty in the policy and regulatory environment for SADC countries. 1.10 These policy guidelines are intended to promote good governance as indicated in the SADC Protocol, and to reinforce the need for good governance practices across SADC for government, regulators, operators and small, medium and micro enterprises (SMMEs).

SECTION 2: CLEAR LEGAL MANDATE AND INSTITUTIONAL FRAMEWORK FOR UNIVERSAL ACCESS AND SERVICE POLICY		
		2.1 There is a clear legal mandate in the law to support and address the concept of Universal Access and Service (UAS). 2.2 The legal mandate and institutional structures for universal access and service are developed through an inclusive public process that involves consultation with relevant stakeholders. 2.3 The principles of good governance are explicitly provided for in the law, including autonomy of the authorities responsible for universal access and service, transparency of processes and procedures, consultation with stakeholders, and periodic review of universal access and service parameters and milestones. 2.4 The legal mandate and institutional structures for universal access and service ensure co-ordination of policies at national level between government departments and regulatory authorities, including in respect of ICT for development (ICT4D), ICT in education (ICT4E), national poverty reduction strategies, millennium development goals (MDGs) and cyber strategies. 2.5 The legal mandate and institutional framework for universal access and service cater for on-going convergence of ICT infrastructures and services, including the Internet, broadband and broadcasting services, in addition to fixed and mobile voice services.

		2.7 The law identifies the regulator or a designated agency as responsible for the implementation of universal access and service policy and clearly defines its mandate.
SECTION 3: OBJECTIVES, PRINCIPLES AND SCOPE OF UNIVERSAL ACCESS AND SERVICE POLICY		
SECTION 2: OBJECTIVES OF UNIVERSAL ACCESS/SERVICE POLICY **2.1 Universal access/service policy aims to:** 2.1.1 Achieve the delivery of affordable, equitable, good quality, and efficient information and communications services to everyone; 2.1.2 Strengthen economic development through greater participation of SMMEs within a fair and competitive environment; 2.1.3 Promote greater private sector participation and encourage competition in the information and communications sector in the SADC region; 2.1.4 Achieve greater social and economic development in the SADC region through the use of information and communications technologies, applications, and services; 2.1.5 Expand the development of the telecommunications network; 2.1.6 Promote local and foreign investment in the information and communications sector in SADC; and		3.1 Universal access and service policy aims to: 3.1.1 Achieve the delivery of affordable, equitable, quality, and efficient ICT infrastructure, services and content with the aim of bridging the digital divide; 3.1.2 Strengthen economic development through the stimulation of entrepreneurship and the greater participation of SMMEs within a fair and competitive environment; 3.1.3 Promote greater private sector participation and encourage competition in the ICT sector in the SADC region; 3.1.4 Achieve greater social development and economic growth in the SADC region through the use of ICT applications, services and content; 3.1.5 Expand the development of ICT infrastructure and extend the reach of the ICT network; 3.1.6 Promote local and foreign investment in the information and communications sector in SADC; and

2.1.7 Empower disadvantaged people to have an affordable and good quality information and communications network, on an equitable basis.		3.1.7 Empower disadvantaged people and communities to achieve an improved quality of life through ensuring equity of access to ICT networks and services that are affordable and of good quality.
	KEY ELEMENTS TO ILLUSTRATE CLEAR OBJECTIVES, PRINCIPLES AND SCOPE OF UNIVERSAL ACCESS/SERVICE • **Access vs Service: A clear distinction is drawn between Universal Access and Universal Service (definitions?)** • **Service Targets: A clear definition is given of specific ICT services or ICT applications that must be provided and to whom** • **Range of Services: Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included (NEW – e.g. 2.1.5 – just telecommunications or be more specific)** • **Technology neutrality so as to allow provision of multiple services whatever the technology?** • **Periodic Review: Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for**	3.2 The scope of universal access and service policy is underpinned by the following principles: 3.2.1 A clear and meaningful distinction is drawn between Universal Access and Universal Service, both in terms of definition and in terms of policy objectives and implementation; 3.2.2 Targets and deliverables are clearly specified and measurable, specifying which ICT infrastructure, services and applications must be provided, and identifying target beneficiaries; 3.2.3 The on-going convergence of infrastructure, services and content in the ICT sector is catered for, and provision is made for the full range of services beyond fixed and mobile telephony to include the Internet, broadband and broadcasting; 3.2.4 Technology neutrality is entrenched so as to allow provision of multiple services over the most appropriate platform and in order to facilitate innovation in the provision of services and the delivery of content; 3.2.5 Periodic public review of Universal Access and Service parameters, objectives, principles, scope, targets, obligations and milestones, in conjunction with stakeholders, is provided for.

2.2 Universal access policy 2.2.1 Universal access entails availability of affordable, good quality and efficient telecommunications services, including good quality access to the Internet. 2.2.2 The objectives of universal access policy include the following: 2.2.2.1 To achieve affordable and equitable access to the information and communications network, applications and services at community level. 2.2.2.2 To mobilise available resources in policy, regulation and funding to provide telecommunications access to the community. 2.2.2.3 To increase expansion of learning opportunities, the acquisition and the provision and sharing of information. 2.2.2.4 To achieve increased access to the information and communications network by all people in SADC in a way that enhances economic inclusion, participation, and regional and international dialogue.	• **UAS Goals: Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy) (covered in 2.2.2.2)**	3.3 The key principles and goals for universal access policy are clearly defined in national policy and set out in the law, and include the following: 3.3.1 Universal access entails widespread availability and accessibility of affordable, quality and efficient ICT infrastructure and services, including quality access to fixed and mobile telephony, to broadcasting services, to the Internet, and access to broadband; 3.3.2 The objectives of universal access policy include the following: 3.3.2.1 To achieve affordable and equitable access to ICT infrastructure, services, applications and content at the level of every community nationwide; 3.3.2.2 To mobilise available resources in policy, regulation and funding to provide effective and widespread access to ICTs at the community level; 3.3.2.3 To increase expansion of learning opportunities, the provision and sharing of information, and the acquisition of knowledge; 3.3.2.4 To achieve increased access to ICT infrastructure, services and content by all people in SADC in a way that promotes social inclusion, enhances social development, promotes economic growth and stimulates regional and international dialogue;
2.3 Universal service policy		3.4 The key principles and goals for universal service policy are clearly defined in national policy and set out in the law, and include the following:

2.3.1 Universal service entails the provision of affordable and equitable telecommunications services to every individual or household on demand. 2.3.2 One of the main objectives of universal service policy is to: 2.3.2.1 Achieve higher teledensity in both urban and rural areas.		3.4.1 Universal service entails the provision of affordable, good quality and efficient ICT infrastructure and services to every individual or household on demand, including good quality access to broadcasting services, to the Internet, and possibly to broadband; 3.4.2 The main objectives of universal service policy include the following: 3.4.2.1 To achieve higher fixed line and mobile teledensity in both urban and rural areas; 3.4.2.2 To ensure nationwide coverage for both radio and television broadcasting services; 3.4.2.3 To increase the uptake and usage of Internet services in homes, through educational institutions and at work; 3.4.2.4 To increase the penetration of broadband networks in both urban and rural areas; 3.4.2.5 To ensure that users with special needs, such as those with disabilities, are adequately catered for; 3.4.2.6 To stimulate demand for new and advanced ICT services and content.
SECTION 3: PRINCIPLES FOR UNIVERSAL ACCESS/SERVICE 3.1 Liberalisation - effective market competition in the information and communications sector in the SADC is the cornerstone for achieving universal access/service;	**What measures can governments introduce?** **1. Improve the legal, regulatory, and business environments.** **2. Address affordability issues** **3. Lead demand development, taking into account that Governments (national, regional, local) become major users of**	(See above where issues have been merged into previous issues/sections.)

3.2 Affordability – telecommunication services are provided at affordable rates; 3.3 Quality of service – services provided are of good quality and acceptable standards; 3.4 Geographic access – telecommunications services are made available or accessible regardless of geographical location; 3.5 Availability – telecommunications services are accessible to a larger proportion of the population in a country.	**information and communications networks and services (e.g. school connectivity and other education projects, government intranet projects, e-procurement, online taxes and public records).** **4. Support private sector supply. Help develop private sector capacity. Help meet the special needs of disabled, infirm, and aging users.**	
SECTION 4: VARIETY OF STRATEGIES AND POLICY MECHANISMS TO PROMOTE UNIVERSAL ACCESS AND SERVICE		
SECTION 4: STRATEGIES TO ACHIEVE UNIVERSAL ACCESS/SERVICE Strategies for achieving universal access/service include amongst others: 4.1 Promotion of fair and effective competition as a fundamental strategy for achieving affordability and network development; 4.2 Establishment of Universal Service Fund as auxiliary vehicle for the financing of universal service / access; 4.3 Imposition of Universal access/service obligations on licensed operators to ensure delivery of services in under-served areas; 4.4 Encouragement of community participation in the provision of telecommunication services; 4.5 Encouragement of local loop unbundling when	**KEY ELEMENTS TO ILLUSTRATE VARIETY OF STRATEGIES AND POLICY MECHANISMS** • **USOs: Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services** • **Liberalisation: Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, LLU, international gateways and undersea cables, and wholesale fibre)** • **Definition of a Strong Regulatory Framework enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing** • **Funding: Definition of range of UAS financing**	4 A multi-pronged approach, adopting a variety of strategies and policy interventions to achieve universal access and service is necessary, including amongst others: 4.1 The introduction and strengthening of competition with liberalisation of appropriate market segments, including, amongst others, CPE, ISPs, data communications, VANS, LLU, number portability, international gateways and undersea cables, and wholesale fibre; 4.2 The strengthening of regulatory reform measures to ensure an independent and effective legal and regulatory framework, including firm regulation to ensure the effectiveness of interconnection, collocation, rights of way, infrastructure sharing, open access; 4.3 The imposition of universal service obligations (USOs) upon designated licensees, such as, inter alia,

competition is introduced; 4.6 Application of preferential or discounted tariffs for achieving good quality access to schools, clinics, telecentres or other community access centres; and 4.7 Liberalisation of some of the market segments such as: 4.7.1 Customer Premises Equipment; 4.7.2 Radio Paging; 4.7.3 Internet Service Providers; 4.7.4 Data Communications; and 4.7.5 Value-Added Services.	**mechanisms including establishment of USF** • **Supply-side Innovation: Mix of complementary and innovative strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation** • **Demand-side Innovation: Mix of complementary and innovative strategies to stimulate demand for access to ICT networks and service, including the definition of school connectivity plans, and plans for the promotion of e-health and e-administrations**	network rollout or service provision to under-serviced areas and communities, provision of specified services such as free emergency calls, or contributions to the Universal Access and Service Fund (USAF); 4.4 The definition of a range of universal access and service financing mechanisms, including the establishment of a universal service fund (USF); 4.5 The introduction of a mix of complementary and innovative supply-side interventions to roll out ICT infrastructure and extend ICT networks, and increase funding for access interventions in order to meet universal access and service objectives and targets, including through pay or play mechanisms, tax incentives, the introduction of public-private partnerships (PPPs), and measures to facilitate community participation; 4.6 The introduction of a mix of complementary and innovative demand-side interventions to stimulate demand for access to ICT infrastructure and networks and promote uptake of ICT services, including the development of public access points, school connectivity projects, the promotion of e-health and e-government, and support for the development of local content and applications.
SECTION 5: UNIVERSAL ACCESS/SERVICE OBLIGATIONS (DEFINITION, MONITORING, ENFORCEMENT, SANCTIONS)		
SECTION 5: UNIVERSAL SERVICE OBLIGATIONS 5.1 Universal service obligation are a tool for facilitating affordability and equitable access to telecommunications services;	**KEY ELEMENTS TO ILLUSTRATE CLARITY OF UNIVERSAL ACCESS/SERVICE OBLIGATIONS (DEFINITION, MONITORING, ENFORCEMENT, SANCTIONS** • **Scope of USOs: There are specific criteria for determining which operators have or are subject to Universal Access and Service**	5.1 The imposition of universal service obligations (USOs) upon operators and the undertaking of universal access and service commitments by licensees may be tools for facilitating the extension of ICT infrastructure and networks and for promoting equitable and affordable access to ICT

5.2 Universal service obligations are embedded in the licence of each operator and be overseen by the regulatory agency; 5.3 Discounted tariffs for telecommunications services are essential for achieving affordability and universal access/service to those economically disadvantaged, which include: 5.3.1 People with physical or other types of disabilities; 5.3.2 Learning institutions in lower income areas, such as primary and secondary schools, libraries, institutes and others; and 5.3.3 Health institutions in lower income areas, such as clinics and hospitals.	**obligations** • **Review Process: USO criteria and their implementation and impact are subject to a defined and regular process of review** • **Differentiation: 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** • **Publication of USOs: Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency** • **Monitoring: Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator,** • **Publication of Progress: Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency** • **Enforcement: If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view**	services. 5.2 Where obligations vary from operator to operator, the criteria for such distinctions are clearly provided for in the law, such as a distinction drawn between dominant and non-dominant operators. 5.3 Comprehensive details of universal service obligations (USOs) are specified in the licence of each operator, or imposed upon a defined class of service providers by regulation, and are published by the regulatory agency designated to oversee their implementation. 5.4 Subject to a carefully researched needs analysis, under clearly defined circumstances, the implementation of universal access and service obligations and commitments may receive support from the universal access and service fund (UASF). 5.5 Comprehensive details of progress on the fulfilment of universal service obligations (USOs) are regularly provided by each operator to the designated agency. 5.6 Comprehensive details of progress on the fulfilment of universal service obligations (USOs) are regularly published in print format and on the

		Internet by the designated agency responsible for monitoring such progress. 5.7 Clear and proportionate enforcement mechanisms are in place, should an operator fail to meet its universal service obligations (USOs) or contribution requirements, along with appropriate dispute resolution mechanisms. 5.8 The criteria and parameters of universal service obligations (USOs), along with their implementation and impact, are subject to a defined periodic process of public review with all stakeholders.
SECTION 6: VARIETY OF MECHANISMS TO FINANCE UNIVERSAL ACCESS AND SERVICE		
	KEY ELEMENTS TO ILLUSTRATE VARIETY OF MECHANISMS TO FINANCE UAS • **Range of Mechanisms: The law establishes a variety of financial mechanisms to support provision of UAS, including cross subsidization, PPPs, Government Funding, Universal Service Funds (6.1 mentions that there is more than a fund)** • **Funding Criteria: The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.** • **Source of Funds: The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues, government budget, etc. with subsidy payments into the Fund at reasonable intervals (e.g. annually or quarterly)** • **Cross subsidies: Is there rate setting above**	6.1 The law establishes a variety of financial mechanisms to support provision of universal access and service, including incentives and subsidies, public-private partnerships (PPPs), government funding, and the establishment of a Universal Service Fund. 6.2 The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral. 6.3 The law establishes a clear and explicit funding arrangement to support universal access and service, sourced from sector revenues, the government budget or donor agencies, with contributions paid in at reasonable intervals, preferably annually. 6.4 Rate setting above cost on some wholesale services to provide "support" for universal access

	cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues? • **Implicit Funding: Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges? Is any use made of discounted tariffs for people with disabilities and educational and health institutions?** • **Smart Subsidies: Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF**	and service services may be considered, provided that such cross subsidies are competitively neutral, and the services or infrastructure receiving the support are clearly specified. 6.5 Implicit funding for universal access and service interventions through inter-operator compensation fees, access deficit charges and other indirect sources may be considered. 6.6 The application of preferential or discounted tariffs for achieving good quality access in respect of schools, clinics, telecentres or other community access points or for users with disabilities, may also be considered. 6.7 Where funding is given to operators or projects to extend ICT infrastructure and increase access to services, this is done on 'smart subsidy' basis to encourage market entry and facilitate the initial rollout of infrastructure and services, rather than to create long-term dependency on such funding.
SECTION 7: THE ESTABLISHMENT AND GOOD GOVERNANCE OF A UNIVERSAL ACCESS AND SERVICE FUND		
SECTION 6: UNIVERSAL SERVICE FUND 6.1 There are several methods of funding Universal access/service, one of which is Universal Service Fund (USF). The purpose of the universal service fund is to be an ancillary tool for funding development of the information and communications sector in underserved areas;	**KEY ELEMENTS TO ILLUSTRATE ESTABLISHMENT AND GOOD GOVERNANCE OF UASF** • **USF: 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** • **Accountability: The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions** • **Financing of USF: Contributions to the fund**	7.1 The law provides for the establishment of a Universal Access and Service Fund (UASF) as one of several methods of financing universal access and service interventions, with such a decision informed by an analysis of the market realities and a public consultation process with stakeholders. 7.2 The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory

6.2 Telecommunications operators will contribute a percentage of their revenues to a universal service fund; 6.3 The universal service fund financial activity are made publicly available on the website and/or by written request of any citizen; 6.4 The universal service fund are audited twice per year, and each audit is to be made immediately available to the public; 6.5 The regulatory agency are responsible for the effective management of the universal service fund; 6.6 The universal service fund should make use of alternative and collateral funding, or small venture capital in order to maximise available financial resources; 6.7 The promotion of public access points such as telecentres, SMMEs and cooperative entrepreneurial organisations that want to implement projects in rural and remote areas are given priority to the use of the universal service fund; 6.8 The use of competitive bidding as a method for granting funds from the universal service fund to any operator are prioritised; and	**are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions** • **Transparency: The fund is audited bi-annually, and audits, and financial and activity reports are publicly available** • **Project identification: The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis(6.7)** • **Project Selection: Competitive least subsidy bidding is used as the basis for selecting individual projects(addition to 6.8)**	provisions. 7.3 Contributions to the Universal Access and Service Fund (UASF) are based on a percentage of revenues of all applicable operators, paid at reasonable (preferably annual) intervals, supplemented by contributions from alternative and collateral sources. 7.4 Financial and activity reports of the Universal Access and Service Fund (UASF) are publicly available, preferably on the web site of the fund. 7.5 The Universal Access and Service Fund (UASF) is audited annually, and the audit reports are publicly available. 7.6 The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects and interventions, subject to a carefully-researched needs analysis.

6.9 The Universal Service Fund Model, in Annex 2 provides a detailed organisational map that will help in the implementation of the Universal Service Fund.		7.7 Competitive least subsidy bidding is used as the basis for selecting and tendering for individual projects and interventions.
SECTION 8: QUALITY OF SERVICE		
5.4 Minimum quality of service standards should apply to all providers, such standards include: 5.4.1 Prompt response to any complaints lodged by the customer; 5.4.2 Restoration of service network within a reasonable period of time; 5.4.3 Compensation to the customer for any period of time during which service was interrupted as a result of an operator's fault; and 5.4.4 Availability of free emergency services.	**KEY ELEMENTS TO ILLUSTRATE QoS** • **QoS requirements: QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing)** • **QoS Monitoring: Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available** • **Range of Services: QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)** • **QoS Review: QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consult**	8.1 Minimum quality of service (QoS) standards apply to all licensees, are specified either in the licence or by regulation. 8.2 QoS components are clearly specified and benchmarked QoS components, and contain both objective and subjective components as defined by the ITU from time to time, including those related to supply of service, faults and repairs, service quality, customer experience assessment, provision of designated universal service obligation (USO) services including free emergency calls, billing, customer complaints and redress. 8.3 QoS benchmarks exist in respect of all relevant services, including at least: fixed and mobile telephony, Internet and broadband services, and broadcasting. 8.4 Operator compliance with quality of service (QoS) benchmarks and standards is regularly and objectively assessed, disaggregated and analysed, and the results made publicly available, preferably on the web site of the regulator. 8.4 Quality of service (QoS) components, parameters and benchmarks are periodically

		reviewed and updated through a process of public, stakeholder consultation. 8.6 Clear and proportionate enforcement mechanisms are in place, should an operator fail to meet required QoS standards, along with appropriate dispute resolution mechanisms.
SECTION 9: CONSUMER PROTECTION POLICY		
5.5 Customer satisfaction are an aim of universal access/service therefore: 5.5.1 Each operator will be required to establish a customer satisfaction organisational unit where customers will lodge service or tariff complaints; and	**KEY ELEMENTS TO ILLUSTRATE INCLUSION OF CONSUMER PROTECTION POLICY** • **Charters: Consumer protection requirements (e.g. customer service charters) are specified, publicised and binding** • **Channels: Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures** • **Information: Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation** • **Surveys: Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available** • **Scope: Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)** • **Review: Consumer protection criteria and requirements are subject to regular review with stakeholder participation**	9.1 Consumer protection provisions are required by the law, specified by regulation or in operator licences, binding on all licensees, and well publicised to all consumers, including by being made available on the Internet. 9.2 Consumer protection requirements exist in respect of all relevant services, including at least: fixed and mobile telephony, Internet and broadband services, and broadcasting. 9.3 Channels for customer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures, with the regulator as referee of last resort. 9.4 Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation. 9.4 The regulator undertakes consumer education, informs consumers of their rights, and provides information necessary to empower consumers. 9.5 Consumers are regularly surveyed by a designated agency in relation to quality of service

5.5.2 The regulatory authority should ensure that all operators meet customer satisfaction goals.		(QoS) and level of satisfaction with operators and their services, and complaints issues, with the survey results made publicly available, including via the Internet. 9.6 Consumer protection parameters and requirements are periodically reviewed and updated through a process of public, stakeholder consultation.
SECTION 10: CONCLUSION		
SECTION 7: CONCLUSION The policy on universal access/service for SADC seeks to achieve affordable and equitable access by everyone to information and communications services in line with objectives of The Protocol. The policy guidelines are presented to the Member States so that the policy harmonisation process will be enhanced and be conducive to attracting local and foreign investment, thereby, facilitating the creation of resources for network development and economic development in the SADC region. The policy also seeks to foster the effective application of the SADC Protocol directives on the separation of functions, policy, regulation and operations, by strengthening good governance practises and competition.		These policy guidelines in respect of universal access and service for SADC seek to achieve widespread and equitable access by all in the region to ICT infrastructure, services and content in line with the objectives of The Protocol. These policy guidelines are presented to the Member States so that the regional policy harmonisation process will be strengthened and be conducive to attracting local and foreign investment, thereby facilitating the creation of resources for the development of ICT infrastructure, services and content, thus fostering social development and economic growth across the SADC region. These policy guidelines also seek to foster the effective application of the SADC Protocol directives on the separation of functions between policy, regulation and operations, by strengthening good governance practices and promoting competition.

Member States should scrutinise their respective legislation in the light of the policy guidelines. TRASA should therefore monitor progress in the implementation of these guidelines.		Member States are recommended to scrutinise their respective legislation in the light of the policy guidelines. SADC is therefore recommended to monitor country progress in the implementation of these guidelines on an ongoing basis.
GLOSSARY OF TERMS		
		Definitions are understood to have the meaning determined by ITU from time to time. Broadband - Internet access with a high capacity, as defined by the ITU from time to time Convergence – A term used to describe a variety of technological and market trends in the ICT sector involving the blurring of previously distinct lines between market segments such as cable television, telephony and Internet access, all of which can now be provided through a variety of different network platforms Collocation – Facility-sharing in which the incumbent operator houses communications equipment of competitive operators to facilitate connectivity to end users COSITU – ITU model for the Calculation of Costs, Tariffs and Rates for Telephone Services

Customer- a person who receives and pays for a telecommunication service over a period of time under an agreement with or pursuant to terms and conditions established by the operator with approval of the National Regulatory a notional point identified as a point of interconnection Authority; Data communications - digital transmission of information usually between computers. Dominant operator - a regulatory classification of a telecommunications operator that has the largest market share in a given market segment or that is otherwise able to exercise market power in the same or other market segments. GGP - Good Governance Practice Harmonization - the dynamic process of establishing mutually complementary policies, legislation, rules, standards, practices or systems between member states on the basis of agreed minimum requirements		CRASA – Communications Regulatory Association of Southern Africa Customer – a person who receives and pays for an ICT service over a period of time under an agreement with or pursuant to terms and conditions established by the operator with approval of the National Regulatory Authority Cybercafé – a place where one can use a computer with Internet access for a fee, usually per hour or minute, and which may or may not serve as a regular café as well. Also known as an Internet café Data communications – digital transmission of information usually between computers Dominant operator – a regulatory classification of an operator that has the largest market share in a given market segment or that is otherwise able to exercise significant market power in the same or other market segments Harmonisation – the dynamic process of establishing mutually complementary policies, legislation, rules, standards, practices or systems between member states on the basis of agreed minimum requirements ICTs – Information and Communications Technologies

ICTs - Information and Communications Technologies Incumbent operator - the existing operator in a market which is opened to competition. Interconnection -the physical and logical connection of two operators networks thereby allowing customers of one system to connect with customers of the other, or to access services provided from the other system. Interface - the technical characteristics that allow two operators networks that are interconnected to understand the technical operation of the other in order for services to interoperate across the interconnection boundary. Interoperability -the technical features of a group of interconnected networks, which ensure end-to-end provision of a given service in a consistent and predictable way. ITU - International Telecommunication Union		Incumbent operator – the existing operator in a market when it is opened to competition Infrastructure or Network – an integrated system of facilities, which comprise the facilities, used to provide one or more info-communications services Interconnection – the physical and logical connection of two operator networks thereby allowing customers of one network to connect with customers of the other, or to access services provided from the other Interface – the technical characteristics that allow two operator networks that are interconnected to understand the technical operation of the other in order for services to interoperate across the interconnection boundary Internet – Interconnected global networks that use the Internet protocol Interoperability -the technical features of a group of interconnected networks, which ensure end-to-end provision of a given service in a consistent and predictable way ITU – International Telecommunication Union LLU or Local loop unbundling – the process of requiring incumbent operators to open the last mile of their legacy networks to competitors Non-discrimination – a condition by which an

Non-discrimination - a condition by which an operator, engaged in the provision of telecommunications services, shall not apply less favourable technical and commercial conditions on any competitor than what it would apply to itself, its subsidiaries or its affiliates in delivery of services. National Regulatory Authority - an agency empowered to regulate and monitor the activities of telecommunications operators or any other info-communications providers in the public interest.		operator, engaged in the provision of ICT services, shall not apply less favourable technical and commercial conditions on any competitor than what it would apply to itself, its subsidiaries or its affiliates in delivery of services. NGN or Next-generation Network – A broad term for a certain kind of emerging computer network architectures and technologies. It generally describes networks that natively encompass data and voice (PSTN) communications, as well as (optionally) additional media such as video. NRA or National Regulatory Authority – a public authority or government agency responsible for exercising autonomous authority to monitor and regulate the provision of ICT infrastructure, services and content in the public interest and in accordance with a defined legal and policy mandate Number portability – The ability of a customer to transfer an account from one service provider to another without requiring a change in number Operator – an entity that provides ICT infrastructure, networks, services or content Pay or Play – A mechanism whereby licensees may opt to fulfil their Universal Service Obligations (USOs) through implementation of approved universal access and service projects or

Operator - a person that operates telecommunications facilities. Paging – a service that provides selective calling from any telephone through a base-station to one or a predetermined group or radio receivers, which emit an audible, visual, or tactile alert and sometimes then record a numeric, alphanumeric, or even a short verbal message. Period of Exclusivity: a period of monopoly whereby operator(s) is given conditions to provide certain services. Public switched telecommunications network (PSTN) - a fully interconnected and integrated system of telecommunications consisting of various means of transmission and switching, utilised to provide basic telephone services to the general public. Public telecommunications services - telecommunications services provided to the general public or to a class of persons so as to be generally available.		contributions to agreed financial mechanisms Period of Exclusivity - a period of monopoly whereby an operator(s) is given conditions to provide certain services PSTN or Public switched telecommunications network – A fully interconnected and integrated system of telecommunications consisting of various means of transmission and switching, utilised to provide basic telephone services to the general public Public telecommunications services – Telecommunications services provided to the general public or to a class of persons so as to be generally available QoS or Quality of service – A measure of network performance that reflects the quality and reliability of a connection. QoS can indicate a data traffic policy that guarantees certain amounts of bandwidth at any given time, or can involve traffic shaping that assigns varying bandwidth to different applications RAPID – Regional Activity to Promote Integration through Dialogue and Policy Implementation RCSA – Regional Centre for Southern Africa Resale – the offering to users or customers for profit of ICT services obtained from another ICT service provider

RAPID - Regional Activity to Promote Integration through Dialogue and Policy Implementation RCSA - Regional Centre for Southern Africa Resale - the offering to users or customers for profit of telecommunication services obtained from another telecommunication service provider; SADC - Southern Africa Development Community SMMEs - Small Medium and Micro Enterprises Subscriber - any person who subscribes to the service or any part thereof, provided by the operator Tariffs - any charges raised by an Operator for telecommunication service(s). Telecommunications - any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choosing.		SADC – Southern Africa Development Community SMMEs – Small Medium and Micro Enterprises Subscriber – any person who subscribes to the service or any part thereof, provided by an operator Tariffs – any charges raised by an Operator for ICT infrastructure, services or content Telecommunications – any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choosing Telecentre – a public place where people can access computers, the Internet, and other digital technologies that enable them to gather information, create, learn, and communicate with others while they develop essential digital skills Transparency – requires that network operators will make publicly available either the interconnection agreements or reference interconnection offers.

Telecommunications Infrastructure or Network - an integrated system of facilities, which comprise the facilities, used to provide one or more info-communications services. Transparency - requires that network operators will make publicly available either the interconnection agreements or reference interconnection offers. TRASA - Telecommunications Regulatory Association of Southern Africa Universal access – a policy of government to make telecommunications services available, at affordable prices, to as many people as possible through common points or end-user facilities such as libraries, schools, health-centres, community centres, public call offices and pay-phones. This policy also applies to advanced information services for instance the provision of Internet services and applications such as tele-education, tele-medicine and electronic commerce. Universal service – a policy of government to make		Universal access – a policy of government to make ICT infrastructure and services available, at affordable prices, to as many people as possible through common points or end-user facilities such as libraries, schools, health-centres, community centres, public call offices and pay-phones. This policy also applies to advanced information services, such as the provision of Internet services and broadband access, and applications such as tele-education, tele-medicine and electronic commerce Universal service – a policy of government to make ICT infrastructure and services, including advanced ICT infrastructure and services, available throughout the country at affordable prices so that they are either available or easily accessible to anyone whenever they are needed, regardless of geographical or physical location, with due regard to people with special needs UAS or Universal access and service, an umbrella term, loosely covering both universal access and universal service UASF or Universal Access and Service Fund – a fund into which contributions from operators and other sources are paid for the purpose of providing basic and advanced ICT infrastructure and services to underserved areas, communities or individuals who cannot afford such services on their own, in the pursuit of the goal of universal access and service USA or Universal Service Agency – an institution recommended to be established under either the

telecommunications services, including advanced telecommunications services, available throughout the country at affordable prices so that they are either available or easily accessible to anyone whenever they are needed, regardless of geographical or physical locations, with due regard to people with special needs. Universality - Universal access and universal Service USAID - United States Aid Agency Universal Service Agency (USA) - an institution recommended to be established under either the Ministry or the Regulatory Authority to design universal service strategies and policies and monitor their implementation. Universal Service Fund (USF) - a fund into which contributions from operators and/or other sources are paid for the purpose of providing basic and advanced telecommunications services to underserved areas, communities or individuals who cannot afford such services on their own, in the pursuit of universal service/access.		Ministry or the Regulatory Authority to design universal service strategies and policies and monitor their implementation USO(s) or Universal service obligation(s) - mandatory stipulations imposed on operators / licensees, requiring, inter alia, network rollout or service provision to under-serviced areas and communities, provision of specified services such as free emergency calls, or contributions to the Universal Access and Service Fund (USAF) VANS or Value-added network services – ICT services provided over public or private networks which, in some way, add value to the basic carriage, usually through the application of computerized intelligence

Value-added services - means (i) the manipulation of the format, content, code, protocol, or other aspect of information transmitted via telecommunications by a customer (ii) the provision of information to a customer, including the restructuring of information transmitted by a customer or (iii) the offering of stored information for interaction by a customer.		

Part 3

KEY LEGAL AND POLICY ISSUES AND COUNTRY ASSESSMENT

Part 3

The Assessment Report provides trends and identifies key issues based on International Best Practices, whilst also recognizing that universal access and service policies are national in scope, and that they therefore must be considered in the context of national legal, policy and institutional frameworks. The particular and specific physical, structural, and behavioural characteristics of the country attempting to develop universal service policies are of critical importance and must be taken into account.

Recognizing that the CRASA guideline is an implementation instrument of the universal access and service related provisions of these founding regional acts, this Assessment also takes into consideration the general SADC ICT policy and legal framework which is currently under review and is going through an update process (SADC Protocol on TCM, SADC ICT Policy and SADC ICT Model Bill). The aim of this Assessment Report is therefore also to provide an analysis of the key factors relating to universal access and service policies as they are reflected in the different CRASA members' national legal and regulatory telecommunications frameworks in relation to universal access and service, and to provide a common reference document that can be used to assess consistently these frameworks at national and regional level.

Finally, this analysis provides further background for policymakers, regulators and other decision makers in the SADC countries as relates to universal access and service and the review of the SADC guidelines on Universal Service.

1 Legal Mandate and Institutional Framework

1.1 Background

The 2002 SADC UAS policy guidelines provide for the following in relation to the legal mandate and institutional framework:

PREAMBLE:

1.1 The SADC Protocol on Transport, Communications and Meteorology ("The Protocol") and the SADC Telecommunications Policies and Model Bill provide essential guidance towards the harmonisation of policy and therefore, of telecommunications development across the region.

1.2 The dynamism and speed of technological development in the telecommunications industry, which create new challenges and opportunities, require further harmonisation of policy, particularly policy for universal access and service.

1.3 The development of telecommunications infrastructure can no longer be taken as a goal in itself, but as a catalyst for enabling information and communications for everyone. Access to information and communications will enhance community participation in social and economic development, by providing opportunities for learning, acquiring and sharing of information and for commercial activities.

1.4 Universal access/service needs to be redefined in the context of the advancement of the information and communications sector in the world and the new business environment.

1.5 The purpose of these policy guidelines is to guide Member States in their effort to implement their own national policy guidelines for universal access and service.

1.6 To serve as a model for harmonisation of universal access and service policy in SADC Member States.

1.7 To create greater certainty in the policy and regulatory environment for SADC countries.

1.8 To promote good governance as indicated in the SADC Protocol, and to reinforce the need for good governance practice across SADC for government, operators and small, medium and micro enterprises (SMMEs).

1.1.1 Legal Mandate

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.

In Hong Kong, for example, the telecommunications policy objectives of the Hong Kong Government were set out in its Position Paper issued in January 1994 as follows :

- *"that the widest range of quality telecommunications services are available to the community at reasonable cost;*
- *that telecommunications services are provided in the most economically efficient manner possible; and*
- *that Hong Kong should serve as the preeminent communications hub for the region now and into the next century."*

It is within this broad policy framework that the specific policy objectives of universal service of the Hong Kong government were set to:

- *ensure access to affordable basic telephone services for all persons in Hong Kong on a non-discriminatory basis irrespective of where they reside or carry on business;*
- *ensure the costs of providing basic services are fairly borne by the users of network services.*

These Universal Service Policy objectives are specifically addressed in the fixed telecommunication network services (FTNS) licences. For the Hong Kong Telephone Company (HKTC), for example, its licence provides that it must ensure that it supplies -

"... a good, efficient and continuous Basic Service ... to all persons in Hong Kong ..."

In addition, the special conditions of all FTNS licences set out the obligation to pay to (or right to receive from) appropriate licensees the USC. The meaning of USC is defined in the special conditions of the FTNS licences to mean –

"Universal Service Contribution is that sum calculated in accordance with a formula adopted annually by the Authority, to ensure that the Hong Kong Telephone Company, where it has a Universal Service Obligation, and any other licensee with such an obligation, as the case may be, receives a fair contribution from other fixed telecommunication network services licensees towards the costs, net of attributable revenues, of serving customers with Basic Service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the Universal Service Obligation."[2]

[2] Statement of the Telecommunications Authority, Hong Kong: "Universal Service Arrangements: the Regulatory Framework", 14 January 1998, available at: www.ofta.gov.hk/en/tas/ftn/ta980114.pdf

1.1.2 Institutional Framework

In addition, universal access and service policy and its institutional framework should therefore be captured in national legislation, regulations, licences or Ministerial policy statements (preferably a combination of all these instruments), which establish the framework and limitations within which the policy must be implemented. Such a foundation is necessary to ensure the credibility, authority and enforceability of the policy, as well as to ensure that its terms are consistent with other national priorities and on-going programmes.

It is also 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.

That being said, 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.

In a number of countries, the ministry responsible for communications implements policy relating to universal access or service. This is, for example, the case in Colombia, Guatemala, and India. The advantage of such an approach is that the entity which defines policy also carries it out. The main disadvantage is that since such policies sometimes include special financing instruments such as a specific Universal Service Fund, which in many countries is mainly built up out of contributions from industry (which in some cases has little say in determining the level of contribution or indeed in the allocation of funds to projects), government is not perceived as being far enough removed to be an independent administrator of the finances. This is even more acutely felt where government still has any ownership interest in the industry.

In other countries, it is the National Regulatory Authority which implements universal access or service policies. Many recognize this as a more optimal and independent solution. Indeed, the 2005 West African Telecommunications Regulators Association (WATRA) Guidelines on Universal Access/Service state that: "National Regulatory Authority's (NRAs) must be established and capacitated to play a key role in implementing universal access policies first through addressing the market efficiency gap (letting the market deliver universal access/service), and second through the true access gap. NRAs are responsible for implementing policies directed towards assuring the best quality reliable services at the most affordable prices that meet the needs of consumers—existing and future."

In Uganda, the 1997 Uganda Communications Act notes that the functions of the Uganda Communications Commission (UCC) will include enhancing the coverage of communications services and products in the country and expanding access to communications services in Uganda for all citizens. In March 2005, the UCC issued Communications (Universal Service) regulations outlining a comprehensive universal service policy for Uganda. These Regulations:

- ensure that the UCC has ample authority to specify and define universal service obligations for operators as well as to address services covered, that it can develop a suitable funding mechanism to support universal service, and that it has an appropriate enforcement authority
- identify the need to monitor delivery of universal service over time and review services captured in the universal service obligation, and to reassess coverage of services if need be;
- direct the UCC to establish a universal service fund to operate in concert with the already existing Rural Communications Development Fund (RCDF) which was established in 1997 by the Uganda Communications Act

- direct the UCC to both monitor and enforce the ability of the operators to carry out their universal service plans, as well as prescribing supply time and quality of service performance measurements intended to evaluate fulfilment of the universal service obligation

Having the NRA responsible for the implementation of UAS is generally seen to be a sound approach for many countries because:

- 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.

Once basic measures have been defined and implemented in the telecommunication sector, including opening the sector up to competition and establishing an independent regulatory agency, it is also the responsibility of policy-makers to monitor their implementation by conducting reviews at regular intervals and making any adjustments that may be needed. This is because a Universal Access and Service strategy needs to be reviewed and fine-tuned from time to time in the light of social, commercial and technological developments, if it is to be effective.

1.2 Key Elements

KEY ELEMENTS TO ILLUSTRATE CLEAR LEGAL MANDATE AND INSTITUTIONAL FRAMEWORK

- **Legal Mandate:** There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)
- **Good Governance:** Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations
- **Policy Co-ordination:** The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)
- **Range of Services:** Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.
- **Consultation:** The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders
- **Accountability:** The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate

Part 3

1.3 Assessment of National Texts

1.3.1 Summary Chart

Country / Region	Legal Mandate:	Good Governance:	Policy Co-ordination:	Range of Services:	Consultation:	Accounta-bility:
Angola	✓	×	×	×	×	×
Botswana	×	×	×	×	×	×
Democratic Republic of Congo (DRC)	✓	×	×	×	×	×
Lesotho	✓	×	✓	×	×	✓
Madagascar	✓	✓	✓	✓	✓	✓
Malawi	×	×	×	×	×	×
Mauritius	✓	✓	✓	✓	×	✓
Mozambique	✓	✓	×	×	×	×
Namibia	✓	✓	×	✓	×	✓
Seychelles	✓	✓	✓	×	×	×
South Africa	✓	✓	×	✓	×	✓
Swaziland	✓	✓	✓	×	×	✓
United Republic of Tanzania	✓	✓	×	✓	×	✓
Zambia	✓	×	✓	✓	×	✓
Zimbabwe	✓	×	×	✓	×	✓

1.3.2 Country Analysis

1.3.2.1 Angola

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

The ICT sector is governed by the 2001 'Basic Telecommunication Law' which lists "the provision of quality telecommunication services, at affordable prices and offering access to a progressively larger number of Angolans in all areas of the national territory[3]" as a key objective. Supplementary objectives include "extending basic services to rural and remote areas with adequate quality standards and affordable prices", the "expansion of the national telecommunications infrastructure", and ensuring "compliance

[3] Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 1.2.

with the obligations of universal service"[4]. UAS is further specifically dealt with under Articles 14 ("Basic service and universal service") and 15 ("Planning the universal service") which deal respectively with universal service obligations and the establishment of a Universal Service Fund[5].

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

Although the 2001 'Basic Telecommunication Law' contains a section dealing with "Regulation Principles", these make no reference to transparency, stakeholder consultation, or periodic review of definitions, targets and obligations[6]. Definitions are to be contained in a proposed "General Plan for Universal Access"[7], which does not appear to have been drafted or promulgated..

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

The 2001 'Basic Telecommunication Law' refers to a proposed "General Plan for Universal Access"[8], which would presumably set out such co-ordination. However, no copy of such a plan is available, and it may not have been drafted or promulgated. The preamble to the law also recognises the role of ICTs as having an "importance that extends to other areas such as defence, human security and social life, and have become an indispensable infrastructure and an important factor of development"[9] and provides for an overall vision and co-ordination by the Department of Telecommunications via "strategic guidelines for the development of the National Telecommunications System as well as general policies and plans [for] the sector"[10]. Again there is unfortunately no further documentary evidence indicating that this has been implemented.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

Although the 2001 'Basic Telecommunication Law' does define "mobile telecommunication service" and "broadcast telecommunications"[11] and refers to these in several places, they are nowhere considered in relation to UAS. There is no mention of the Internet, and broadband is only mentioned once[12] as a component of national telecomms infrastructure. UAS thus appears to be conceived of only in relation to fixed line telecommunications.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

The 2001 'Basic Telecommunication Law' creates a "National Telecommunications Council" as an "inter agency, government consultation body, in charge of analyzing and proposing national telecommunications development policies[13]" with its composition and functions to be defined by separate charter. A 'National Information and Communications Technology Commission' was established

4 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 1.3 (a), 1.3 (c) and 1.3 (d).
5 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 14 & 15.
6 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 8.
7 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.
8 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.
9 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – preamble.
10 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 6.1 (c).
11 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 2.1 (u) and (e) respectively.
12 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 2.1 (f).
13 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 10.1.

in 2002, but in the absence of the relevant documentation[14], it is unclear whether this is the same or another body: the operationalisation of the Council and the charter therefore remain unclear.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The only clear line of accountability in respect of UAS provided under the 2001 'Basic Telecommunication Law' rests with the Minister and the Department of Telecommunications, to whom the regulator reports. The Minister and the Department bear overall responsibility for policy and its application[15], and, as previously noted, are responsible for the General Plan for Universal Access, and the imposition of USOs. Some other related responsibilities, such as the creation of the National Telecommunications Council and the implementation of the USF, are rather more loosely assigned to "government".

1.3.2.2 Botswana

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

Although the 1995 Telecommunications Policy makes "Universal Service"[16] the first of its three prime goals, the subsequent Botswana Telecommunications Act[17], which establishes the national regulatory authority and defines its powers makes no mention of UAS other than the mandate to "take all reasonable steps to promote the provision, throughout Botswana, of such telecommunication services as will satisfy all reasonable demands for them"[18]. .

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

Although the 1995 Telecommunications Policy calls for a "fair and transparent regulatory regime where users, operators and other interested parties are able to participate"[19], there are no corresponding provisions in the subsequent Botswana Telecommunications Act[20]. The regulator enjoys a considerable degree of independence.

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

There is no reference to the need for policy co-ordination in either the 1995 Telecommunications Policy or the subsequent Botswana Telecommunications Act.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The 1995 Telecommunications Policy and the subsequent Botswana Telecommunications Act focus primarily on fixed and mobile telecommunications services, although the Act does refer to "packet switched data... and voice over internet services"[21]. Broadband and broadcasting are not mentioned.

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14 Angola (2002) 'Decree 45/02', Republic of Angola, Luanda.
15 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 2.1 (p) and 2.1 (q).
16 Botswana (1995) 'Telecommunications Policy for Botswana', Ministry of Works, Transport and Communications, Gaborone, December 1995
17 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone.
18 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 17 (2) (a).
19 Botswana (1995) 'Telecommunications Policy for Botswana', Ministry of Works, Transport and Communications, Gaborone, December 1995
20 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone.
21 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 27 (1).

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

There is no requirement to this effect in either the 1995 Telecommunications Policy or the subsequent Botswana Telecommunications Act. The 2004 Maitlamo policy review does recognise the need for "more vigorous promotion of Universal Service"[22], but there is no evidence of any subsequent concrete intervention.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The function assigned by the 1996 Botswana Telecommunications Act to the regulator to "take all reasonable steps to promote the provision, throughout Botswana, of such telecommunication services as will satisfy all reasonable demands for them"[23] is the extent of the mandate.

1.3.2.3 Democratic Republic of Congo (DRC)

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

Universal service is a key theme in the stated policy goals of the general 2002 Telecommunications Law in the DRC. These goals include providing access to basic telephone and telex services in rural and urban areas at a reasonable cost, and reducing disparities between different regions in the country in terms of infrastructure and services.[24] The introductory section of the Law also confirms that the concept of universal service had not previously existed as a policy goal in the DRC.[25] Although the law does not list criteria for imposing universal service obligations, the text creating the universal service fund is found in the section of the law addressing the temporary exclusivity of "the public operator" (presumably, the incumbent).[26]

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

The 2002 Telecommunications Law has no such provisions.

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

The 2002 Telecommunications Law has no such provisions.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The 2002 Telecommunications Law has no such provisions.

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22 Botswana (2004) 'Maitlamo: Botswana's National ICT Policy – Legislative Framework & Change Report, Republic of Botswana, Gaborone, December 2004, p8.

23 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 17 (2) (a).

24 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo (2002)* at *Politiques des Télécommunications.*

25 Id. at *Innovation Introduites*.

26 *Id.* at Art. 39.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

The 2002 Telecommunications Law has no such provisions.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The 2002 Telecommunications Law has no such provisions.

1.3.2.4 Lesotho

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

The legal core mandate of the Lesotho regulator includes the primary injunction to "take all reasonable steps to promote network development, Universal Access and Service to telecommunication services" and to ensure these are extended to the "least advantaged" [27].

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

The 2000 Lesotho Communications Authority Act has only some general provisions governing public availability and access to information, but nothing specific to UAS[28].

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

The 2000 Lesotho Communications Authority Act requires the regulator to "develop annual objectives" regarding universal access and provides for some international co-ordination to "take into account the work and recommendations of the international and regional organisations of which Lesotho is a member"[29].

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

Although the 2000 Lesotho Communications Authority Act suggests that the focus of universal access work are in respect of "basic telephone service"[30] there is nothing in the law which prevents UAS interventions to extend to Internet, broadband and broadcasting.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

There is no requirement in terms of the 2000 Lesotho Communications Authority Act for either the Ministry or the regulator to undertake consultation regarding UAS policies.

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27 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, 15 (2) (a) & (h).

28 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, Schedule 1.

29 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, 48.

30 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, 48.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The mandate of the regulator includes a specific section of the 2000 Lesotho Communications Authority Act dealing with UAS objectives and funding[31].

1.3.2.5 Madagascar

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

The 2005/023 Telecommunications Law provides that the Malagasy ICT Policy shall promote universal access and a reduction of costs of telecommunications services[32]. It also provides that government is responsible for the establishment of financing mechanisms and for the establishment and maintenance of telecommunications and ICT infrastructures in those zones not covered by operators[33].

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

The 2005/023 Law provides that the Agency shall carry out its tasks transparently and in the interest of the general public interest and with the aim of offering consumers universal access to telecommunications services[34].

The 2005/023 Law further provides that the Minister in charge of telecommunications may through his own initiative or upon the request of one or more decentralized local government agencies request the Regulatory Agency to prepare a tender for the granting of a licence to cover areas which are part of the universal service plan/projects. The Law also provides that if the Responsible Minister is seized of the expansion of a network or service by a State or regional authority, or by another Ministry or government department, then he shall consult the agency responsible for managing the fund on the appropriateness of using a subsidy[35]. If the Responsible Minister is seized of the promotion and / or operation of telecommunications and ICT projects by a government department, it will consult the agency responsible for managing the fund on the opportunity to use subsidies. Where the body responsible for managing the fund recommends that a subsidy is required, a tender will be launched by the Regulatory Agency with all operators to identify technically qualified bidders and the lowest bidder for subsidies shall be selected.

The regulator, Office Malagasy d'Etudes et de Régulation des Télécommunication (OMERT), determines which communities are in need of service and the level of subsidies necessary to achieve coverage, and submits a plan to the Ministry for approval. Finally, the 2005/023 Law also provides for transparency in the management of Universal service funds and determines that the regulator, OMERT, shall manage any such funds separately from the funds of the Agency[36].

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

Law no. 2005-023 provides that the Minister in charge of telecommunications is responsible for developing plans and master plans for the development of the sector in accordance with national policy

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31 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, 48.

32 Loi no. 2005-023, Art. 5

33 Loi no. 2005-023, Art.9

34 Loi no. 2005-023, Art. 35 (2).

35 Loi no. 2005-023, Art.24.

36 Loi no. 2005-023, Art. 7 (4)

directions and that he shall facilitate their implementation to the benefit of the industry and other sectors identified by other departments.[37]

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The provisions of the law and the decree relating to universal access and service are focused on public telephone networks in particular[38]. However, in accordance with Article 23 par. 4 of the Law (loi n°2005-023 of 17 October 2005,) which creates a Telecommunications Development Fund, the objective of the Fund is to contribute to the financing of the development of telecommunications and ICT as well as for the development of such services in un-served or underserved areas. The Law provides that the Fund may be used for the extension of ICT and telecommunications infrastructure, as well as to fund feasibility studies and the development of services necessary for the implementation of key development initiatives such as those included in the DSRP (Document de Stratégie pour la Réduction de la Pauvreté), MAP (Madagascar Action Plan), and PNTIC (Politique National TIC)[39]. The law and Decree do not prevent UAS interventions to extend to Internet, broadband and broadcasting.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

Article 3 of the 2006 Universal Service Decree[40] provides that the Minister shall define public emergency services after consulting other ministerial departments and upon the proposition of the regulator. The decree also includes specific mechanisms whereby the Minister consults the regulator as well as operators and other stakeholders for the definition of areas to be covered, as well as to allow operators in particular to bid for these projects (first right of refusal.)

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

There are clear provisions in the law and the Decree mandating both the Minister and the regulator (OMERT) in terms of UAS and setting out the process for the implementation of UAS. The 2006 Decree in particular gives details on how the Ministry and OMERT shall work together to implement UAS, with the Ministry. Madagascar's Telecommunications Development Fund was created in 1999 with the objective to finance the extension of telephony service to areas that would otherwise go un-served, particularly where such extension cannot be achieved without subsidies. The funds are distributed on a community-by-community basis, with the specific projects being defined by the regulator, OMERT, which is charged with the day-to-day management of the fund, determines which communities are in need of service and the level of subsidies necessary to achieve coverage, and submits a plan to the Ministry for approval.

OMERT is charged with the day-to-day management of the Fund. To that end, it opens bank accounts dedicated to housing universal service funds, and must keep separate books for the Fund operators that show the nature and amount of resources, expenses, debts, and available funds. Excess funds are carried over to the next fiscal year.[41] The Ministry of Telecommunications, Posts and Communication oversees OMERT's management of the Fund.[42] OMERT is also required to file an annual report on the Fund to the Ministry, as well as publish an annual report, which includes a detailed accounting of Fund monies for the previous year.[43] Its Fund accounts must be verified by an independent accountant for veracity and

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37 Loi no. 2005-023, Art. 24
38 Decree 2006-616, Art. 3
39 Decree 2006-616, Art. 7.
40 Decree 2006-616
41 Decree 2006-616 at Art. 7(4).
42 Decree 2006-616 at Art. 7 and *passim*.
43 Decree 2006-616 at Art. 7(6) and (7).

compliance with Malagasy accounting standards. The Fund must be separately managed from other OMERT monies.[44]

1.3.2.6 Malawi

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

Universal access and service are not mentioned in either the 1998 Malawi Communications Act, which only gives the regulator a very unspecific mandate to "promote open access to information by means of communication services"[45]. Government policy at the time was committed to an ambitious expansion of the fixed telephony network[46], with subsequent government policy committing the country to ensuring that the "entire population of the country has access to telecommunication services"[47], although it remains unclear how much of this policy has in fact been implemented.

Malawi is, however, currently engaged in a review of ICT policy and legislation. The proposed ICT policy does commit the government to ensuring that "all people in every part of the country have reasonable means of access to affordable essential ICT services in their community"[48]. Pending legislation deals fairly extensively with universal access[49].

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

There is no provision in the 1998 Malawi Communications Act dealing with governance generally, or in relation to UAS.

Pending legislation currently has a provision requiring stakeholder consultation is respect of any "decision in accordance with the Act which has a significant impact, and another establishing a "Universal Access Consultative Committee"[50].

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

There is no mandate in the 1998 Malawi Communications Act requiring national co-ordination around UAS polices, nor does any co-ordination appear to have taken place. A number of policies relating to UAS in particular[51], and ICT4D more broadly, are in existence[52], although the degree of their implementation remains uncertain. The latter sets out to be broadly encompassing, and describes itself as "A Policy

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44 Decree 2006-616 at Art. 7(6).

45 Malawi (1998) Malawi Communications Act, Republic of Malawi, Lilongwe.

46 Malawi (1998) 'Communications Sector Policy Statement', Ministry of Information, Republic of Malawi, Lilongwe , August 1998, p 3.

47 Malawi (2002) Rural Telecommunications Policy 2002, Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 6.

48 Malawi (nd) 'National ICT Policy', Final draft, Ministry of Information, Republic of Malawi, Lilongwe, available online at www.malawi.gov.mw/ict_policy.pdf.

49 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, sections 26 – 29. Because of the draft, and thus potentially changeable, nature of the legislation it is not commented on in detail.

50 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, sections 19 (6) and 26.

51 Malawi (2002) Rural Telecommunications Policy 2002, Ministry of Information, Republic of Malawi, Lilongwe , December 2002

52 Malawi (2003) 'An Integrated ICT-led Socio-Economic Development Policy For Malawi, Republic of Malawi, Lilongwe , June 2003.

Statement for the Realization of the Aspirations of the Vision 2020 through the Development, Deployment and Exploitation of ICTs within the Economy and Society".

The current draft ICT policy with its vision of an "ICT-led Malawi", does, however, imply the integration of "ICT to support the process of accelerated socioeconomic development"[53].

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The 1998 Malawi Communications Act, deals specifically only with fixed telecommunications and broadcasting. Pending legislation currently contains a far wider conceptualisation of the range of ICT services[54].

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

There is legal requirement in terms of the 1998 Malawi Communications Act for either UAS policy development or stakeholder consultation. "National Communications Policy"[55] is the sole prerogative of the Minister. Pending legislation currently proposes the establishment of a stakeholder-based "Universal Access Consultative Committee" to advise the regulator on UAS programmes, budgets and activities[56].

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

Responsibility for UAS intervention is not provided for under the 1998 Malawi Communications Act, although a separate regulator for the ICT sector is established[57]. Pending legislation currently proposes vesting authority for the implementation of UAS policy with the regulator, advised by the proposed "Universal Access Consultative Committee"[58].

1.3.2.7 Mauritius

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

The basis of universal access policy in Mauritius has been established as a principle under section 16(a) of the ICT Act 2001, which stipulates that the object of the Authority amongst others shall be: "to democratise access to information taking into account the quality, diversity, and plurality in the choice of services available through the use of information and communication technologies". Additionally, the ICT Authority has the statutory duty, under sections 18 (1)(w), and 21 (1) of the Information and Communication Technologies Act 2001, to establish and manage a Universal Service Fund.

Pursuant to the recommendations made in January 2006 by the Authority to the Minister in accordance with section 21 (3) of the Act, and further to various consultative meetings that the Ministry held with the stakeholders on the subject since June 2008, the Minister has, in accordance with sections 21(3) and 48 of the Act prescribed the manner and basis of contribution into the USF. The said prescription has been

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53 Malawi (nd) 'National ICT Policy', Final draft, Ministry of Information, Republic of Malawi, Lilongwe, available online at www.malawi.gov.mw/ict_policy.pdf, pp 8 & 6.

54 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe.

55 Malawi (1998) Malawi Communications Act, Republic of Malawi, Lilongwe, Section 105.

56 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 26.

57 Malawi (1998) Malawi Communications Act, Republic of Malawi, Lilongwe, Part II.

58 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 26.

made by way of Regulation which is gazetted as GN 206 of 2008. The said Regulations have come into effect since the 3rd October 2008.

With the coming into effect of the aforesaid Regulations, an administrative structure and established procedures was set up for the management of the USF.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

It is established under the Act that the Authority shall be the body designated to manage the USF. It is thus important to draw a management and organizational structure that fits within the Authority to handle the USF, while at the same time ensuring transparency, accountability and preserving autonomy.

Under section 21 (1) of the ICT Act 2001 it is provided that the Authority shall establish a Universal Service Fund (USF). Pursuant to the recommendations made in January 2006 by the Authority to the Minister in accordance with section 21 (3) of the Act, and further to various consultative meetings that the Ministry held with stakeholders, the Minister has, in accordance with sections 21(3) and 48 of the Act prescribed the manner and basis of contribution into the USF. The said prescription has been made by way of Regulation which is gazetted as GN 206 of 2008. The said Regulations have come into effect since the 3rd October 2008.

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

The ICT Act provides that the main duties of the Authority with respect to Telecommunications include to advise and assist in the formulation of national policies regarding the regulation of telecommunications.

The 2004 National Telecommunications Policy provides that in the implementation of USF, the regulatory authority will establish a USF advisory group which will represent public operators, industry representatives, consumer associations and government officials to advise on the most efficient and effective utilization and operation of the USF. This advisory group shall also be responsible to explore the possibility of utilizing these funds for other ICT based public service projects in fields such as education, health and social welfare.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The 2001 Act defines universal service as an information and communication service including a telecommunication service determined by the Authority as being a service to be provided by a licensee to an area or sector not served or adequately served by the service. "Information and communication technologies" means technologies employed in collecting, storing, using or sending out information and include those involving the use of computers or any telecommunication system.[59]

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

There are no such provisions in the law.

[59] Information and Communication Technologies Act 2001, Section 2.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

Under section 21 (1) of the ICT Act 2001 it is provided that the Authority shall establish a Universal Service Fund (USF). The February 2004 USF Consultation proposed (and this structure was confirmed by the 2009 CRASA country report)[60] that the management structure consisted of the following entities:

- The ICT Authority Board which is the board created under the Act.
- The USF advisory group which provides input, suggestions and ideas to the USF management concerning project priorities, operational plans, objectives and key issues. The group shall consist of appointed representatives from the industry, the government, public institutions with an emphasis on those most involved with fund activities, public operators, and consumer representatives.
- The USF fund administrator who oversees all fund activities.
- The project manager who is responsible for analysing market conditions, developing proposed project plans and acting as liaison with USF funding recipients in the implementation and evaluation of approved projects.
- Liaison officers: within the Authority (Engineers, attorneys, accountant, economist, etc.) will be responsible to extend professional support and resources in their fields of responsibility to the management.

1.3.2.8 Mozambique

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

Chapter V of the Telecommunications Law (Lei das Telecomunicacoes – Lei no 8/2004[61]) provides a clear legal mandate to address Universal Access, and mandates government with the task of ensuring the existence and availability of a universal access to telecommunications services.

The Telecommunications Strategy approved by Decree 64/2006 also provides that non-discriminatory access to information and communications services is a right of citizens.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

Articles 38 and 40 provide for the governance of universal service and the funds, and provide that the regulator, INCM, shall define yearly objectives for the services to be offered, define projects every two years, grant projects through public tender, and request or receive project proposals from third parties through their own initiative or public consultation.

Article 39 also provides that any obligations imposed on licensees must be proportional and transparent.

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60 ICTA Country Report 2009 for CRASA, available at: www.icta.mu/documents/publications/CRASA_Country_Report-Mauritius_300409.pdf

61 Available at: www.incm.gov.mz/legislacao.html

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

Article 38 of the Telecommunications Law provides that government is responsible for ensuring the existence and availability of access to a universal telecommunications service in Mozambique, but does not detail any need for coordination of policies.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The Law only caters for the provision of basic telephone service and limits this to fixed and mobile telephone service (Article 38 (2) and (3).) The 2006 Telecommunications strategy also includes internet in the definition of basic telecommunications services.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

Article 38 of the Telecommunications Law provides that government is responsible for ensuring the existence and availability of access to a universal telecommunications service in Mozambique and provides that the regulator, INCM, establishes annual objectives and defines projects to achieve access to universal telecommunications service.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

Chapter V of the Telecommunications Law provides that government is responsible for ensuring the existence and availability of access to a universal telecommunications service in Mozambique and provides that the regulator, INCM, establishes annual objectives and defines projects to achieve access to universal telecommunications service. Decree 69/2006 determines that the management of the Universal Service Fund pertains to the INCM.

1.3.2.9 Namibia

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

A vision of providing "universal access to information and communication facilities in Namibia for all communities (to telephone, Internet, and multimedia services)" is clearly set out in the country's 2009 overarching ICT policy[62]. This is carried through into the national telecommunications policy, which states that "All telecommunications providers are required to contribute to the provision of universal service to achieve the Namibian Government's developmental goals"[63], and is given a legal foundation in the new Communications Act, which has a specific section dealing with UAS[64].

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62 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 13, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

63 Namibia (2009) 'Telecommunications Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 15, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_-_Telecommunications_Policy_18_February_2009_v10.pdf.

64 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Part 4, Sections 56 – 58. This act is not yet in force.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

The 2009 Communications Act requires the regulator to establish "procedural regulations" as a matter of priority, governing such issues as how rules and regulations are made, transparency and stakeholder consultation.[65] This must specifically include how funds in the USF are accounted for[66].

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

There is no provision in the 2009 Communications Act requiring policy co-ordination at a national level. However, the overarching national ICT policy seeks to set out an integrated policy vision of ICT as "the most important sector in the economic development of the country by 2030"[67]. In addition, stakeholders have created the ICT Alliance of Namibia which is a stake holder comprised organisation working with government and that is committed to the successful development, positive growth and ethical conduct of the Information and Communication Technology society in Namibia. The ICT Alliance assisted the government in an advisory capacity in forming the Ministry of Information and Communication Technologies. The Ministry of Information and Communication Technologies has also worked closely with the ICT Alliance, among others, in drafting the Communications Bill. The ICT Alliance is further assisting the Ministry of Information and Communication Technologies with its commitment to narrow the digital divide in developing better public access to ICTs in rural areas of Namibia.[68]

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

National ICT policy clearly envisages UAS to extend beyond telephony to include at least the "Internet, and multimedia services)"[69]. The 2009 Communications Act mandates the regulator to prescribe which "telecommunications services" (broadcasting is thus specifically excluded from UAS) fall within the ambit of UAS[70].

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

Consultation in respect of UAS via a "rule-making procedure" is only mandatory in determining the basket of services that fall within the ambit of UAS[71].

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65 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Sections 30 – 32.

66 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 22 (3).

67 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p3, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

68 ICT Alliance, available at: www.ictalliance.org.na/

69 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p13, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

70 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 57 (1).

71 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 57 (1).

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The 2009 Communications Act clearly assigns to the regulator the mandate over USOs and the USF, and for annual public reporting via a "universal service report" [72].

1.3.2.10 Seychelles

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

The 1999 Law[73] defines Universal Service as such telecommunication service as may be determined by the Minister as a service that needs to be provided by a licensee to an area or community not served, or not adequately served, by such a service. The law also provides that the Minister shall be responsible for the general superintendance and supervision of all matters relating to broadcasting and telecommunication and shall carry the provisions of this Act into execution. Within this context, Part III provides for the administration of the law by the Minister and sets out among the objects to be achieved the promotion of consumers' interests, promotion and maintenance of competition among service providers and goals of universal service.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

There are no provisions in the Act relating to good governance principles. The ICT Policy, however provides that an important precondition in the implementation of the National ICT Policy is that there are constant and meaningful dialogue between Government and stakeholders[74].

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

There are no provisions in the Act relating to co-ordination of policies. The ICT Policy, however provides that ICT is both cross-sectorial and a sector in its own right. This cross-cutting characteristic is one of the main reasons why a coherent, harmonized and over-arching National ICT Policy is needed. Therefore, the Policy states that any National ICT Policy must relate to other relevant sectorial policies.[75] The Policy also clearly states that This National ICT Policy is the country's attempt to harmonize, co-ordinate and integrate all ICT initiatives towards a common set of objectives. For the successful achievement of the policy objectives, it is imperative that all partners and stakeholders of the policy pull together in the same direction.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

There are no specific provisions in the law relating to the range of services to be provided, except for the provision of Section 34 every person who operates a telecommunication service shall furnish directory information in respect of its subscribers to the Minister, or to such other person, and in such manners as the Minister may direct, and the provision of Section 36 that the Minister may, at a time of emergency, order any person providing a broadcasting service or a telecommunication service to give priority to the transmission of such message and information as may be specified in the order.

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72 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 58.

73 Broadcasting and Telecommunication Act 1999, Section 2.

74 ICT Policy, Section 1.1, p. 2

75 ICT Policy, Section 1.1. p. 2

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

There are no provisions in the law relating to consultation. The ICT Policy, however, recognizes that for the successful achievement of the policy objectives, it is imperative that all partners and stakeholders of the policy pull together in the same direction[76].

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

Section 28 of the Law provides that there shall be a fund which shall be called the Telecommunication Universal Service Fund, and that the Minister shall be responsible for the administration of the Fund.

1.3.2.11 South Africa

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

From the outset UAS has been at the forefront of ICT policy, setting a "particular goal... to balance the provision of basic universal service in telecommunications to disadvantaged rural and urban communities with the delivery of advanced information services capable of meeting the needs of a growing South African economy" [77]. The 2006 Electronic Communications Act accordingly lists as one of its core objectives the need to "promote the universal provision of electronic communications networks and electronic communications services and connectivity for all" [78], and goes on to set out the legal framework governing the work of the Universal Access and Service Agency of South Africa and the operation of the Universal Access and Service Fund [79].

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

The UAS Agency is partially independent, overseen by a board appointed by the Minister, and mandated to act in fulfilment of its legal mandate and in "accordance with any policy direction issued by the Minister"[80]. Stakeholder consultation to "[obtain] public participation to the greatest degree practicable" is mandatory in respect of defining UAS, in respect of which the regulator "must at least bi-annually review and update, the prescribed definition of under-serviced area and the list of designated under-serviced areas eligible for construction payments" from the USF . There are no other specific good governance requirements in the law other than that the UAS Agency, like other similar bodies, is governed by the 2000 Promotion of Administrative Justice Act. [81]

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76 ICT Policy, Section 1.1., p. 3.

77 RSA (1996) 'White Paper on Telecommunications Policy', The Ministry for Posts, Telecommunications and Broadcasting, Republic of South Africa, Pretoria, p1.

78 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 2 (c). UAS was equally prominent in preceding legislation, the 1996 Telecommunications Act.

79 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Sections 80 – 91.

80 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Sections 80 & 81.

81 RSA (2000) Promotion of Administrative Justice Act 3 of 2000 (as amended, 2008), Republic of South Africa, Pretoria, available (un-amended) online at www.info.gov.za/gazette/acts/2000/a3-00.pdf

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

While the law assigns overall policy responsibility to the Minister of Communications who "may make policies on matters of national policy applicable to the ICT sector, consistent with the objects of [the] Act",[82] there is no specific requirement for co-ordination of UAS with other policies.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The 2006 Electronic Communications Act explicitly defines UAS to include "electronic communications network services, electronic communications services and broadcasting services" , thereby creating a very wide-ranging definition which covers both broadcasting and 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.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

The 2006 Electronic Communications Act imposes no specific requirement for the development of overall UAS policy on either the Minister or the UAS Agency. The latter is only mandated to ensure stakeholder participation "to the greatest degree practicable" when developing UAS definitions. [83]

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The lines of accountability of the UAS Agency are somewhat complex and ill-defined. It is overseen by a board directly appointed by the Minister without any public process. It is required to act in "accordance with any policy direction issued by the Minister" and the administration of the USF is "subject to the control and in accordance with the instructions of the Minister". [84] On the other hand the Agency is also required to "advise the [regulator] on any matter relating to universal access and universal service". [85]

1.3.2.12 Swaziland

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

Section 5 of the 2009 Swaziland Electronic Communications Bill[86] defines universal service as the minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price as may be defined under regulations made under this Act.

Section 34 provides that the services to be made available are the following: (a) the provision of a connection to the public telephone network at a fixed location, at an affordable price, upon request,

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82 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 3 (1).

83 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 1.

84 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Sections 80, 81 and 87 (4).

85 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 82 (4) (f).

86 Swaziland Electronic Communications Bill, 2009, available at: www.gov.sz/

which connection must be capable of allowing end-users to make and receive local and international calls, facsimile communications, and data communications, at data rates that are sufficient to permit functional internet access, taking into account prevailing technologies used by the majority of subscribers, and technological feasibility; (b) the provision of a comprehensive directory of subscribers in a form approved by the Commission, whether printed or electronic or both, as the Commission may determine, and updated at least once (1) in each year; (c) the provision of a comprehensive telephone directory enquiry service; (d) the provision of public pay telephones sufficient to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones, the accessibility of such telephones to disabled users and the quality of service; and (e) the introduction of specific measures for disabled users and low income users.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

There are no provisions regarding stakeholder consultation. Section 33 of the Bill provides that the Commission, in consultation with the Minister, shall develop annual objectives with the purpose of ensuring that the services are made available, at the quality specified, to all end-users in the Kingdom of Swaziland, including those with disabilities, independently of geographical location, and, in the light of specific national conditions, at an affordable price. The Bill also provides that the Commission shall determine the most efficient and appropriate approach for ensuring the implementation of universal service.

Section 35 also refers to transparency, this time in relation to designating a licensee to provide universal service in underserved areas. The Section provides that the Commission shall adopt an efficient, objective, transparent and non-discriminatory designation procedure whereby no licensee is excluded beforehand from being designated. The designation procedure adopted shall ensure that the universal service obligations are provided in a cost-effective manner.

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

Section 37 of the Electronic Communications Bill. 2009, provides that in the event that the Government of the Kingdom of Swaziland decides to establish a donor-supported Rural Access Fund (RAF), providing grant support to co-fund priority investments increasing the access of the rural population to basic infrastructure services, such as electricity and electronic communications, the Minister in consultation with the Commission shall develop a policy for the manner in which the funds from Rural Access Fund are to be used in conjunction with the connection targets fixed in the tariff approval procedures.

There are no further provisions in the Electronic Communications Bill, 2009, or the Swaziland Communications Commission Bill, 2010 relating to the need for co-ordination of policies.

The National Information and Communication Infrastructure (NICI)14 Policy & Plan development process in Swaziland is geared towards recognising the areas where ICT could effectively contribute towards the achievement of the vision enshrined in the National Development Strategy (NDS)[15] and the Transformation Policy Statement[16] which also incorporates other existing Government initiatives such as the Smart Programme on Economic Empowerment and Development (SPEED), the Poverty Reduction Strategy and Action Plan (PRSAP), Public Sector Management Programme (PSMP), the Fiscal Restructuring Programme, the Millennium Development Goals (MDGs) and the Millennium Action Plan (MAP). The targets laid down in the above strategies will be difficult to attain in the absence of a national ICT Policy.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

There are no provisions in the Electronic Communications Bill, 2009, or the Swaziland Communications Commission Bill, 2010 relating to the provision of universal Internet, Broadband or broadcasting in addition to fixed and mobile services.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

Section 9 of the Electronic Communications Bill, 2009, provides that it is a duty of define the general national strategy for the electronic communications sector in the country, including plans for the sector's development and expansion, as well as to define and monitor the policy related to the promotion of universal access and universal service within the Kingdom of Swaziland for the purpose of expanding the scope of coverage of electronic communications in such a way as to meet the requirements of economic and social development in the country. Section 33 provides that the Commission, in consultation with the Minister, shall develop annual objectives with the purpose of ensuring that services are made available, at the quality specified, to all end-users in the Kingdom of Swaziland, including those with disabilities, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

Section 33 of the Bill provides that the Commission shall determine the most efficient and appropriate approach for ensuring the implementation of universal service.

Section 34 provides that the Commission may issue decisions, guidelines or recommend regulations to the Minister in relation to any of the rights and obligations for operators as defined in the law, including provisions regarding the tariffs and quality of the services.

Section 7 of the Swaziland Communications Commission Act, 2010[87], provides that the Commission shall recommend a policy to the Minister for a universal service or access programme and administer a universal service or access programme, where necessary.

1.3.2.13 United Republic of Tanzania

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

The 2003 National Information and Communications Technology (ICT) Policy considered universal access a key policy issue for Tanzania and as such it was considered that the country's ICT Policy should contain provisions "for bringing access to the more remote areas of the country and those under served in urban areas". The Universal Communications Service Access Act of 2006, promulgated on January 5, 2007, addresses the concept of universal service and sets the legal framework for establishing a USF, the Universal Communications Service Access Fund, in Tanzania.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

There are a number of governance provisions set out in the Tanzania Communications Regulatory Authority Act, both in general and specifically in relation to UAS. These include a requirement to hold a

[87] Swaziland Communications Commission Act, 2010, available at www.gov.sz

public enquiry before a decision to "grant, renew or cancel a licence with an exclusivity period or universal service obligation" or before adopting a "code of conduct". Further an annual consultative process "with such persons and organizations as the [regulator] may consider necessary or desirable to consult for the purpose of effectively carrying out its functions" is mandated. In addition, a "public register" of regulatory information and decisions is required to be kept and made available.

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

Although there is no overall legal requirement for UAS policy co-ordination, the regulator is required to "establish and maintain a system of coordination, cooperation and consultation" with the broadcasting regulator and any other similar bodies.

Range of Services*: Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.*

In the Act, universal services are defined as "a defined minimum set of communications services of specified quality which is available to all users independent of their geographical location, and in the light of specific national conditions, at an affordable price." Communications services are, in turn, defined to include "postal, electronic communications or content" services, which could reasonably be interpreted to include broadcasting, Internet and broadband.

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

The 2006 Universal Communications Service Access Act imposes no requirement for the development of an overall national UAS policy.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The 2006 Universal Communications Service Access Act makes the USF responsible for a range of UAS issues and interventions. The USF is overseen by a board composed of stakeholder and government representation, and run by a manager appointed by the board .

1.3.2.14 Zambia

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

Although Zambia's 2006 ICT Policy recognises the need to "develop universal access / service goals and strategies for rural telecommunications, radio and TV"[88], UAS is not a cornerstone feature of ICT policy. In similar vein, although the law has a section dealing with the establishment of a universal access and service fund and associated regulatory functions[89], UAS is not listed within the core mandate of the regulator.

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88 Zambia (2006) 'National Information and Communication Technology Policy', Ministry of Communications and Transport, Lusaka, April, 2006, p 12.

89 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Part VIII.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

There are no specific good governance stipulation in the 2009 ICT Act, either in general or in relation to UAS provisions.

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

Policy co-ordination and integration is not required under the 2009 ICT Act. However, the 2006 ICT Policy sets out to provide a comprehensive vision of the role of ICTs within socio-economic development:

> *adopting and using ICT as a tool available to reduce the development divide, [as] an enabler to build an information centered society where everyone can create, access, utilize and share information and knowledge leading to greater productivity, greater competitiveness and sustainable economic growth*[90]

Further, the policy identifies 13 inter-related pillars for ICT policy, viz: "human resource; education; access, media, content & culture; ICT sector; telecommunications infrastructure; e-government; e-commerce; agriculture; health; tourism, environment & natural resources; youth & women; legal & regulatory framework; security in the information society" [91]

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The 2009 ICT Act mandates the regulator to "promote the widespread availability and usage of electronic communications networks and services throughout Zambia"[92]. These networks and services are elsewhere widely defined so as to include Internet, broadband and broadcasting and include "satellite networks, fixed, circuit and packet switch, internet, mobile terrestrial 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"[93].

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

There is no requirement in the 2009 ICT Act for the Ministry to develop such a policy or to engage in stakeholder consultation. The 2006 ICT Policy in fact precedes the 2009 ICT.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

The 2009 ICT Act places the USF and associated regulatory functions as the responsibility of the regulator, ZICTA[94].

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90 Zambia (2006) 'National Information and Communication Technology Policy', Ministry of Communications and Transport, Lusaka, April, 2006, p 1.

91 Zambia (2006) 'National Information and Communication Technology Policy', Ministry of Communications and Transport, Lusaka, April, 2006.

92 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, 70 (2).

93 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, 2 (1) (d).

94 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Sections 70 – 72.

1.3.2.15 Zimbabwe

Legal Mandate: ***There is a clear legal mandate in the law to support or address the concept of Universal Access and Service (UAS)***

Zimbabwe's 2000 Postal and Telecommunications Act provides for the creation of a universal service fund and for the imposition of certain universal service obligations upon licensees[95] and assigns to the regulator a general mandate to "ensure the provision of sufficient domestic and international telecommunication and postal services throughout Zimbabwe"[96]. The 2001 Broadcasting Services Act likewise establishes a fund, inter alia, to promote access to broadcasting services and provides for public service broadcasting obligation[97].

There is a subsequent 2005 ICT policy, but this is not publicly available.

Good Governance: ***Good governance principles are provided for in the law – transparency, independence of UAS Agency, stakeholder consultation concerning definition, periodic review of Universal Access and Service targets & obligations***

There are no governance principles laid down in either the 2000 Postal and Telecommunications Act or the 2001 Broadcasting Services Act, either in general or in relation to UAS. The independence of both regulators is somewhat constrained with the Minister able to rescind decisions of the telecomms regulator that are deemed not to be in the "national interest" [98] and to direct the broadcasting regulator to "vary or revoke any [programme] standard"[99].

Policy Co-ordination: ***The law/legal mandate provides for coordination of policies at national level (UAS is coordinated with ICT4D, ICT4E, national poverty reduction strategies, MDG, cyber strategies, etc.)***

There are no provisions in either the 2000 Postal and Telecommunications Act or the 2001 Broadcasting Services Act providing for national co-ordination and integration of UAS policies.

There is a subsequent 2005 ICT policy, but this is not publicly available.

Range of Services: ***Legal mandate and institutional framework cater for Internet, broadband and broadcasting services in addition to fixed and mobile voice services.***

The 2000 Postal and Telecommunications Act covers both fixed and mobile telephony, as well as Internet, e-mail and leased line services[100]. The 2001 Broadcasting Services Act covers a wide range of commercial, community and subscription broadcasting services, delivered terrestrially, via satellite or over the Internet[101].

Consultation: ***The law/legal mandate clearly directs the ministry to develop a UAS Policy after consultation with relevant stakeholders***

There are no provisions in either the 2000 Postal and Telecommunications Act or the 2001 Broadcasting Services Act requiring the Minister to develop national UAS policy via a stakeholder consultative process.

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95 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Sections 72 – 79 and 94.

96 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 4 (1) (a).

97 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Sections 28 – 35 & 39.

98 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 26.

99 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 25.

100 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 34.

101 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 7.

Accountability: ***The law/legal mandate clearly mandates the regulator or identifies a designated agency for the implementation of the UAS Policy and defines its mandate***

Both the 2000 Postal and Telecommunications Act and the 2001 Broadcasting Services Act assign their respective regulators mandates in respect of UAS funding and universal service obligations, but do not specifically assign a broader, more overall UAS mandate.

1.4 International Case Studies

1.4.1 COMESA

The COMESA 2004 Policy Guidelines on Universal Service/Access provide that the common ICT policy for COMESA, which was adopted in March 2003, will be the foundation for initiatives aimed at increasing the availability and the accessibility of ICT services, while ensuring universal access to these services. It also provides that the Guidelines are an elaboration of the principles and strategies for use by regulators, operators, and other players in promoting universal service and access to ICT services.[102]

The Guidelines also provide that the aim of universal access and service shall be to promote the use of ICT applications in social, cultural and economic oriented programmes to improve the standard of life of local communities, particularly in rural areas, and specifically list e-health, e-education and e-learning as well as e-governance and e-commerce. The Guidelines also encourage Member States to consider strategies for interventions as being interrelated.

1.4.2 ECOWAS

The ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service ("The Act") which was adopted by ECOWAS Heads of State in January 2007 defines universal service as all citizens within the territory of the ECOWAS Member States having access to a basic group of services at affordable rates, regardless of their geographic location.[103]

The Act calls upon Member States to take all necessary measures in order to:

- Formulate a national policy that identifies appropriate and realistic universal access and service objectives and considers the differences between universal access (public access to ICTs) and universal service (private or household access to ICTs);
- As frequently as possible, conduct public consultations with stakeholders to identify their needs and modify universal access and service policies, regulations and practices accordingly;
- Design universal access and service policies, regulations and practices to create incentives for the private sector to extend universal access to communications services;
- Use a multi-pronged approach to addressing universal access and service challenges and opportunities, relying on complementary strategies to meet the targets that have been set;
- Establish a fair and transparent telecommunications regulatory framework that promotes universal access to ICTs, while allowing the market to address universal access and service to the greatest extent possible, intervening only where the market has failed or seems likely to do so. This entails:
  - Promoting technology-neutral licensing practices that enable service providers to use the most cost-effective technology in providing services for end users;

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102 COMESA Policy Guidelines on Universal Service/Access, August 2004.

103 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service at Art. 1 (2).

- Adopting a transparent and non-discriminatory interconnection framework in which interconnection rates are linked to costs;
- Reducing regulatory burdens to lower the costs of providing services to end users; and
- Promoting competition in the provision of a full range of ICT services to increase access, affordability, availability and use of ICTs.[104]

Furthermore, the Act determines that where it is necessary for regulators and policymakers to intervene to facilitate the delivery of universal access and service:

- Public access strategies are explored in addition to private universal service strategies;
- Both pay and play strategies are employed, but where possible operators are encouraged to invest in rural, remote and low-income populations and areas;
- Countries can use regulatory reform as the first step in achieving universal access, recognizing that further steps may be necessary to achieve ubiquitous access to ICTs, *e.g.,* in rural areas or for users with special needs; and
- Appropriate licensing schemes for rural service providers could be set up to meet the needs of unserved and underserved areas.[105]

In addition, the Act establishes that national regulatory authorities shall ensure that universal service is provided to everyone at affordable rates. They may, at the request of the minister in charge of the sector, require designated companies to make available to low-income or special-needs users prices, options or schemes that differ from those normally prevailing in a commercial operation, particularly with a view to ensuring universal service. The conditions under which such facilities are granted must be proportional, transparent and non-discriminatory, and publicly promulgated.[106]

The Supplementary Act on Universal Service also provides that cooperation in the area of universal service and access must be explored on several levels:

- Between the private sector and communities, so that where possible the market can deliver universal access and service;
- Between communities, government and the private sector, to ensure that the access gap is dealt with in a manner that is relevant to communities; and
- Within government, where the full benefits of ICTs may be reaped when it extends beyond infrastructure and technology, to include ICT access in health, education, agriculture and other sectors.[107]

The Supplementary Act on Universal Service provides that Member States shall ensure that requests for connection to a telecommunications network are satisfied by at least one operator and may, if necessary, designate one or more operators to that effect, so that all parts of the national territory are covered. The connection provided must enable the user to make domestic and international calls, send and receive voice messages and fax and data transmissions, and connect to the Internet with an adequate transfer rate.[108]

Mandatory services include directory and information services, emergency services, public payphones and services to people with disabilities or special needs. The Act provides, however, that within their

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104 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service at Art. 4.
105 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service at Art. 4.
106 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service at Art. 18.
107 *Id.* at Art. 15.
108 *Id.* at Art. 8.

respective national territories, ECOWAS Member States may decide to make additional services accessible to the public beyond those services already defined in the Act as universal service obligations.[109]

In terms of directory and information services, the Act provides that Member States shall also ensure that:

- A directory is made available to users in a form approved by the national regulatory authority. The directory may be printed or electronic or both, and must contain the credentials of all subscribers, including their fixed and mobile telephone numbers;
- At least one telephone information service covering all listed subscribers is available to all users, including users of public telephone booths; and
- Companies providing the above services apply the principles of non-discrimination to the processing and presentation of information provided to them by operators.110

In terms of emergency services, the Act provides that Member States shall ensure that emergency calls can be made free of charge from any fixed or mobile telephone, including telephone booths.[111]

The Act also provides that in order to enable those who do not subscribe to a telephone service to have access to telephone services, Member States undertake to ensure that public payphones are installed, under reasonable conditions in terms of quantity and geographic distribution. Without prejudice to more generous domestic legislation, Member States shall ensure that national regulatory authorities are in a position to impose schedules for the deployment of public payphones, with the aim of having at least one public payphone in each locality numbering 500 inhabitants or more by December 31, 2010. ECOWAS will monitor the implementation of this measure on an annual basis.[112]

In addition, the Act provides that where the need exists, Member States shall take specific measures to ensure that users with disabilities or special social needs have equivalent and affordable access to publicly available telephone services, including emergency and directory services at an affordable price.[113]

In terms of good governance principles, transparency and consultation, the ECOWAS, Supplementary Act on the Harmonization of the Policies and of the Regulatory Framework for the ICT Sector, provides that Member States shall take the necessary steps to guarantee the creation of transparency mechanisms and the distribution of procedures for consultation with the sector players, giving interested parties an opportunity to bring forward their observations within a reasonable timeframe, as well as creation of a central information desk to give access to all of the ongoing consultation exercises and publish the results of public consultations, except in specifically described cases where confidentiality is an issue. The Act also provides that "Member States shall ensure that the authorities responsible for defining and developing . . .[ICT] policy take the necessary steps to ensure good governance in the sector, by means of the following. . . by adopting transparent decision-making and rule-making procedures relating to ICT policy and regulation."[114]

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109 *Id.* at Art. 14.
110 *Id.* at Art. 9.
111 *Id.* at Art. 10.
112 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service at Art. 11.
113 *Id.* at Art. 12.
114 ECOWAS, Supplementary Act A/SA.1/01/07 on the Harmonization of the Policies and of the Regulatory Framework for the ICT Sector, Chapter IV, Articles 6(d) & 11.4(c)]

1.4.3 EU[115]

The 2002 Universal Service Directive provides for the liberalisation of the telecommunications sector and increasing competition and choice for communications services and states that these go hand in hand with parallel action to create a harmonized regulatory framework which secures the delivery of universal service.

The Directive provides that national regulatory authorities are required to take account of the views of end-users, consumers (including, in particular, disabled consumers), manufacturers and undertakings that provide electronic communications networks or services. Member States shall specifically ensure that the NRAs establish a consultation mechanism which ensures that the interests of consumers, in terms of electronic communications, are duly taken into account.[116]

The Directive also provides that the concept of universal service should evolve to reflect advances in technology, market developments and changes in user demand and is subject to periodic review by the Commission, with a view, in particular, to determining the need for modification in the light of technological and market developments.

The Directive further provides that ensuring universal service or the provision of a defined minimum set of services to all end-users at an affordable price may involve the provision of some services to some end-users at prices that depart from those resulting from normal market conditions. However, compensating undertakings designated to provide such services in such circumstances need not result in any distortion of competition, provided that designated undertakings are compensated for the specific net cost involved and provided that the net cost burden is recovered in a competitively neutral way.

In terms of the definition of universal service, the Directive specifies that EU Member States shall ensure that the required services are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimize market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

In accordance with the Directive, EU Member States must ensure the following:

- Access at a fixed location upon request, to enable users to make and receive local, national and long distance calls, fax communications, and to enable them to have functional access;
- At least one comprehensive directory and one comprehensive enquiry service comprising the numbers of all fixed and mobile subscribers who so wish;
- Availability of public pay phones over the whole territory;
- Measures that ensure that the disabled have access to the same services at an affordable price.
- (since 2005) Required to supply connection that provides “functional” Internet access, which is limited to a single narrowband connection and does not extend to ISDN or broadband.
- Must respond to all reasonable requests to install a telephone line, offering the same prices irrespective of location.

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115 Source: EC, Universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) dated 7 March 2002, Articles 1 and 3

116 Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), Art. 33.

On the 25th of November 2009 the Universal Service Directive was amended. One of the most important changes for the future of the scope of the universal service obligation is the new recital 5, which states that data connections to the public communications network at a fixed location are capable of supporting data communications at rates sufficient for access to online services such as those provided via the public internet. However recital 5 also states that it is not appropriate to mandate a specific data or bit rate at Community level. Flexibility is required to allow Member States to take measures, where necessary, to ensure that a data connection is capable of supporting satisfactory data rates which are sufficient to permit functional internet access, as defined by the Member States, taking due account of specific circumstances in national markets, for instance the prevailing bandwidth used by the majority of subscribers in that Member State, and technological feasibility, provided that these measures seek to minimize market distortion.

A clear change in the new recital 5 in comparison to the former recital 8 of directive 2002/22, is that there is no reference included to what data rates are sufficient for access to online services such as those provided via the public internet. The former recital 8 mentions a data rate of 56 Kbit/s to be sufficient, the new recital 5 states that the data connection are capable of supporting satisfactory data rates which are sufficient to permit functional internet access, as defined by the member states. The removal of the reference to narrowband data rates (56 Kbit/s) gives member states the flexibility to determine what, at that moment of time, is a sufficient data rate for functional internet access. This change allows member states to determine that in their country broadband is regarded as being functional internet access.

1.4.4 Republic of Congo (Brazzaville)

Title VII, Chapter 1 of the "Loi portant réglementation du secteur des communications électroniques of 2009 (« The Electronic Communications Law ») clearly provides a legal mandate at both policy and regulatory level to address universal access and service.[117]

In addition, Article 5 of the Electronic Communications Law defines Universal Service as a minimal and affordable offer of electronic communications services throughout the territory, and universal access as access to a set of minimal services which are to be defined by a law[118].

Article 87 goes into further detail and provides that government shall adopt the necessary measures to guarantee:

- The availability throughout the country of a national broadband infrastructure to transport voice, data and video (images);
- …
- the availability of a wide range of public access options of good quality which shall include public phones, public telecentres and multiple service community centres, and which shall be available in sufficient number, spread equally geographically, and be affordable;
- high speed Internet access in schools. hospitals, security services, libraries, municipalities and other community centres[119].

The Electronic Communications Law clearly provides for stakeholder consultation concerning definition, periodic review of Universal Access and Service targets and obligations.[120]

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117 Congo (2009) Loi portant réglementation du secteur des communications Électroniques, Titre VII, Chapitre 1, Articles 85-89.

118 Congo (2009) Loi portant réglementation du secteur des communications Électroniques, Article 5.

119 Congo (2009) Loi portant réglementation du secteur des communications Électroniques, Article 87.

120 Congo (2009) Loi portant réglementation du secteur des communications Électroniques, Article 88.

The Electronic Communications Law does not provide for the coordination but does provide that policy makers shall promote universal access and service to improve public service provision, especially in relation to health, education, and rural development[121].

The Electronic Communications Law clearly looks at different services which can be offered within the realm of universal access and service.

The Electronic Communications Law clearly provides for stakeholder consultation concerning definition, periodic review of Universal Access and Service targets and obligations.[122]

The Electronic Communications Law provides that government defines universal access and service policy and that the regulator implements it.[123] The Loi portant création de l'agence de régulation des postes et des communications électroniques (The Agency Law) provides that the regulator is responsible for the evaluation of costs, determination of financing of universal access and service as well as management thereof,[124] and the Statutes of the Agency[125] provide that the economics directorate manages universal service[126]

1.4.5 Morocco

Universal service is defined by the Law n°24-96, as modified, Decree n°2-97-1026, as modified, and the licences of public telecommunications network operators and seeks the nation-wide expansion of services, including basic telephony and value-added services, at affordable prices and at a minimum level of quality.[127]

In 2004, important modifications to the universal service policy were adopted. The scope of the universal service was broadened widened and redefined as being a telecommunication service, "and not simply a telephonic service," which includes the provision of Internet and value-added services. The new regulatory framework has likewise clearly defined the mechanisms necessary to the realization of the goals of universal service, within the context of market mechanisms and competition.

The framework in Morocco includes the following aspects:

- The scope of universal service is expanded to include "aménagement du territoire" as well as to include value added services, in particular those allowing access to internet ;
- The establishment of an inter Ministerial Committee named "Comité de Gestion du Service Universel de Télécommunications (CGSUT)", which is primarily in charge of the definition and selection of universal service projects which are to be introduced on a national level ;
- The creation of a special Fund named "Fonds du service universel des télécommunications" (FSUT). This Fund was created in 2005 to finance universal service projects selected by the CGSUT.

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121 Congo (2009) Loi portant réglementation du secteur des communications Électroniques, Article 85.
122 Congo (2009) Loi portant réglementation du secteur des communications Électroniques, Article 88.
123 Congo (2009) Loi n° du portant réglementation du secteur des communications Électroniques, Article 86.
124 Congo (2009,)Loi portant création de l'agence de régulation des postes et des communications électroniques, Art. 5.
125 Statuts de l'agence de régulation des postes et des communications électroniques approuvés par décret n° 2009-477 du 24 décembre 2009
126 Statuts de l'agence de régulation des postes et des communications électroniques approuvés par décret n° 2009-477 du 24 décembre 2009, Article 54.
127 Loi 55-01 Modifiant et Complétant la Loi 24-96 Relative à la Poste et aux Télécommunications (Nov. 8, 2004) at Art. 1(21).

- The clarification of implementation mechanisms for universal service projects by public telecommunications network operators ;
- The introduction of « market mechanisms » to accomplish relevant universal service missions

In order to ensure efficient management of the FSUT and that universal service programmes are coordinated with a coherent overall governmental development strategy, an inter-ministerial committee entrusted with the management of the universal telecommunications service was established. Chaired by the Prime Minister, the committee is made up of certain government members and the General Manager of the ANRT. The main tasks of the committee are as follows:

- Defining the main objectives and priorities for universal service;
- Formulating multi-year universal service plans;
- Proposing, for each competitive tender, the scope of services to be offered; and
- Approving the service terms and conditions for each tender offer.[128]

1.4.6 Uganda

The 1997 Uganda Communications Act notes that the functions of the Uganda Communications Commission (UCC) will include enhancing the coverage of communications services and products in the country and expanding access to communications services in Uganda for all citizens.[129]

The 2005 Sector Policy Review provided that when the telecommunications sector policy is defined using the holistic approach, Universal Access is necessarily defined by the question: "What infrastructure and services must be in place (where and when) in order to enable the human development plans and objectives of the different sectors?" This, the policy review stated, extends from the International Vision (MDGs), the National Vision (Vision 20-25) to the National ICT Policy and the specific sector policies and plans.[130]

In March 2005, the UCC issued Communications (Universal Service) regulations. These regulations outline a comprehensive universal service policy for Uganda. The regulations address the universal service obligations in Uganda by ensuring that the UCC has ample authority to specify and define universal service obligations for operators as well as to address services covered, the development of a suitable funding mechanism to support universal service, and enforcement authority. Moreover, the regulations address the need to monitor delivery of universal service over time and review services captured in the universal service obligation, and to reassess coverage of services if need be.

In establishing a framework and policy for universal service, the regulations direct the UCC to establish a universal service fund. This fund will operate in concert with the already existing Rural Communications Development Fund (RCDF) which was established in 1997 by the Uganda Communications Act.

The Regulations provide for good governance principles such as, for example, the obligation of UCC to publish an audit report on the calculation of the net cost of universal service obligation and to make it open to public inspection.[131]

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128 Fiche Synthétique sur le Service Universel (undated).
129 The Communications Act (1997) at Art. 5.
130 Uganda 2005 Sector Policy Review, available at: www.ucc.co.ug/UgTelecomsSectorPolicyReview_31_Jan_2005.pdf
131 2005 Universal Service Regulations, Section 11 (6).

UCC uses the annual report of the Rural Communications Development Fund (RCDF) together with input from stakeholders to evaluate progress made in meeting the communications needs of rural areas and revise the RCDF Policy, as appropriate, and reviews the RCDF Policy at least every two years.[132]

Performance indicators to evaluate the RCDF Policy include:

- The growth/increase in the number of sub-counties which have access to basic services;
- The growth/increase in the number of districts that have Internet Points-of-Presence (PoPs);
- The growth/increase in the number of vanguard schools/institutions which have been established;
- The growth/increase in the number of people trained out of the vanguards schools/institutions;
- The quality and quantity of programmes undertaken in the areas of content creation and ICT awareness;
- The overall sustainability and profitability of the RCDF supported programmes;
- The socio-economic impact of the RCDF supported programmes in the community.[133]

2 Objectives, Principles and Scope of Universal Access and Service

2.1 Background

2002 SADC UAS policy guidelines provide the following in relation to objectives, principles, and scope of UAS:

2.1 Universal access and service policy aims to:

2.1.1 Achieve the delivery of affordable, equitable, good quality, and efficient information and communications services to everyone;

2.1.2 Strengthen economic development through greater participation of SMMEs within a fair and competitive environment;

2.1.3 Promote greater private sector participation and encourage competition in the information and communications sector in the SADC region;

2.1.4 Achieve greater social and economic development in the SADC region through the use of information and communications technologies, applications, and services;

2.1.5 Expand the development of the telecommunications network;

2.1.6 Promote local and foreign investment in the information and communications sector in SADC; and

2.1.7 Empower disadvantaged people to have an affordable and good quality information and communications network, on an equitable basis.

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132 Rural Communications Development Policy for Uganda, the Uganda Communications Commission, July 2001, Section 3.4.11.

133 *Id.* at Section 3.4.11.

2.1.1 Definition of Targets and Goals of 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 means 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 other areas, including very poor urban areas in large metropolitan cities, including slums.

In the past, the definition of targets and goals generally included:

- A public phone for a certain size of community (e.g., for all communities larger than 500 inhabitants);
- A limited walking distance (e.g., 5 km) to a public phone;
- An Internet POP in district centres, provincial capitals or towns above a certain size that provides either high-speed or broadband capacity; and
- A public access Internet centre accompanying the Internet POP.

More ambitious goals are, however, being included in more recent laws and guidelines, including, for example:

- An greater telephony subscriber penetration or even a greater rural penetration target within a specific time frame
- Asking operators to provide a tariff option that allows households in the lowest income a minimum or modest use.

As stated in Module 4 of the InfoDev ICT Regulation Toolkit on Universal Service, to be useful, targets need to have the following characteristics:

- Targets should focus on needs that have clear indicators and high priorities so that efforts are not spread too thinly among too many targets;
- Targets are designed to look ahead three to five years;
- Targets are ambitious but realistic in the light of a country's actual situation;
- Targets are reviewed regularly (e.g., every two or three years) to remain ambitious but realistic; and
- Targets are objectively measurable, so that progress can be assessed.

The Toolkit also suggests that targets are in line with the goals set by the World Summit on the Information Society (WSIS) process in support of the Millennium Development Goals (MDGs).

Whatever the targets, ideally, a clear distinction must however be drawn between Universal Access and Universal Service. Although there is no fixed or standard definition for the scope of universal access and service, currently established universal service and access policies typically seek to meet the objectives of availability, affordability and accessibility.[134] The targets and range 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 and access.

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

As stated in the *InfoDev* ICT Regulation Toolkit on Universal Access and Service,[135] the terms *universal access* (UA) and *universal service* (US) are used in a wide variety of contexts to describe or demonstrate objectives and policies that governments implement to ensure that all their citizens have access to the benefits of modern economic life. They refer to the ability of everyone, regardless of region or location, socio-economic status, ethnicity, gender, disability, or any other factor, to access services. The concepts are broadly promoted and widely accepted as the best expression of policies seeking to achieve equality and fairness of opportunity along with economic growth. Within this context, the key goal of a country's universal service and access policy is to develop the infrastructure and regulatory tools necessary to provide each member of its population with access to a point of communication.

In general, US refers to service at the individual or household level – typically a telephone in each home – whereas UA refers to a publicly shared level of service which is generally through public payphones or Internet telecentres. However, there is more to the definition of the terms than just the fact of providing a connection to every household as opposed to connectivity in every village. Indeed, the three main dimensions distinguishing Universal Access and Universal Service articulated by the ITU 2003 *Trends in Telecommunication Reform Report* are:

- **Availability**: The level of service is the same wherever a person lives or works, with no disadvantage stemming from geographic location. In particular, rural and urban distinctions do not affect a person's ability to access communication services. In the information age, the quality of services becomes even more important.
- **Affordability:** Everyone can afford service, and no one is disadvantaged by income level. Cost variations due to location, terrain or climate, which often dovetail with urban/rural factors, do not impact on one's access to ICT services. This dimension presents unique challenges with regard to addressing network expansion.
- **Accessibility:** People with disabilities can use the service; one's level of physical and mental ability does not affect access to communication services. In the information society, policy makers must look past physical accessibility and take into account the *relevance* of content and applications and the ability of users to understand it.

This has led to various definitions around the world. Under the EU Telecoms rules as set by the Universal Service Directive of 2002, for example, universal service is a safety net for achieving social inclusiveness. It ensures that basic communications services of good quality are always available at an affordable price, even if the market does not provide them under normal commercial conditions. This set of basic services, which are already available to the great majority of citizens and considered essential for participation in society, is called 'universal service'. The Universal Service Directive defines universal service as *"minimum set of services, of specified quality to which all end-users have access, at an affordable price in the light of national conditions, without distorting competition".*

2.1.2 Scope of UAS

A clear definition is given of specific ICT services or ICT applications that must be provided and to whom. Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included

In Hong Kong, the service scope of universal service is referred to as "Basic Service" in the special conditions of the FTNS licences. It is defined as:
"Basic Service means, subject to the Ordinance, the provision of:
(a) a public switched telephone service including the service connection, continued provision of connectivity, provision of a dedicated telephone number, an appropriate directory listing (except where

[135] *InfoDev* ICT Regulation Toolkit, Module 4: Universal Access and Service, available at: www.ictregulationtoolkit.org/en/Section.3126.html

the customer otherwise directs), a standard telephone handset without switching capacity listing (except where the customer elects to provide the handset), standard billing and collection services and relevant ancillary services and facilities necessarily utilized by the licensee; and
(b) a reasonable number of public payphones including payphones located within publicly or privately owned facilities to which the public have access, whether on a 24 hour basis or restricted to certain hours or days of the week; and
(c) a reasonable number of public payphones, designed for ease of effective use by the hearing impaired; and
(d) a reasonable number of public payphones, designed for access by the physically disabled, including but not limited to those persons using wheelchairs; and
(e) operator provided directory enquiries, fault reporting, service difficulty and connection services; and
(f) a tropical cyclone warning service; and
(g) a thunderstorm and heavy rain warning service; and
(h) a flood warning service; and
(i) access to a number or numbers for emergency services; and
(j) such other services, subject to the Ordinance, as the Authority may include."[136]

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 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."

According to a recent ITU Report, by 2010, about 82 countries around the world, from Afghanistan to the US, Australia, Malawi, Chile, and Slovenia had adopted or planned to adopt a national broadband strategy. The ITU said that national broadband policies and plans were clearly focusing on the benefits of building nationwide broadband infrastructure to provide public services online – including e-health, e-education and e-government. Over 40 countries now included broadband in their universal service or universal access definitions, and in some countries broadband access has become a legal right.

The scope of UAS is often specified in detail to ensure that it is fit for purpose. As mentioned above, it needs to be accessible and affordable as well as available. Features of UAS that might be specified include the following:

- Times of day when there is access to the service;
- Type of shelter for the terminals (e.g. secure building for a telecentre);
- Access to and usability of the terminal for people with physical disabilities;
- Convenience and pleasantness of location for all target groups of users (e.g., women might not wish to enter a bar to use a service);
- Quality of service (network reliability, fault repair times and call quality for telephony and prescribed down and upstream data rates for the Internet service).

[136] Statement of the Telecommunications Authority, Hong Kong: "Universal Service Arrangements: the Regulatory Framework", 14 January 1998, available at: www.ofta.gov.hk/en/tas/ftn/ta980114.pdf

- Payment methods (e.g., cash or prepaid cards) and for prepaid cards, availability of sales outlets; and
- Personal support for using the services.

Other services that are entering UAS policies include:

- Directories and directory enquiry services;
- Support services for Internet subscribers (e.g. help-lines, training);
- Emergency call answering facilities (dispatch of help for emergencies); and
- Special facilities to permit use by people with disabilities on par with all other facilities.

Figure 1 below shows the universal service obligations for designated universal service providers in the European Union, Uganda and India and illustrates how universal service and access objectives vary from one country to another.

Figure 1

European Union	EU Member States must ensure the following: 1) Access at a fixed location upon request, to enable users to make and receive local, national and long distance calls, fax communications, and to enable them to have functional access; 2) At least one comprehensive directory and one comprehensive enquiry service comprising the numbers of all fixed and mobile subscribers who so wish; 3) Availability of public pay phones over the whole territory; 4) Measures that ensure that the disabled have access to the same services at an affordable price. 5) *(since 2005)* Required to supply connection that provides "functional" Internet access (FIA), which is limited to a single narrowband connection and does not extend to ISDN or broadband. 6) Must respond to all reasonable requests to install a telephone line, offering the same prices irrespective of location. 7) Ensure universal availability of connections by every person or individual households to public communication networks through inter alia pay phones, community telecentres, tele-boutiques, kiosks, cafes or community communications internet access terminals 8) Provide the following services: (i) connection to a fixed communication network able to support voice telephony, fax and data transmission,(ii) reasonable geographic access to public call boxes across Uganda, (iii) ability of consumers to access emergency and free services, operator assistance and directory inquiry services, (iv) ability to meet needs of people with disability,(v) delivery of affordable basic communication services to all customers on reasonable request, (vi) providing customers with disabilities with the same or equivalent services as all other customers so as to have access to the same level of universal service.

India	Stream I: Provision of Public Telecommunications and Information Services (a) Operate and maintain village public phones (VPT); (b) after target of one VPT per village achieved, provide additional public phone in villages of 2000+ without public call office; (c) replace multi access radio relay technology public phones; (d) upgrade public telephones to public tele-information centres; (e) install high speed public telecommunications information centres. Stream II: Provide household telephones in rural and remote areas as determined by central government
Sources: What Rules for Universal Service in an IP-enabled NGN Environment? Background Paper, International Telecommunication Union, April 2006, pp. 5-8.; The Communications (Universal Service) Regulations of Uganda, 2003, Section 6; and Universal Service Obligation Fund, Department of Telecommunications, Ministry of Communications & Information Technology of India at www.dot.gov.in/uso/usoindex.htm.	

These examples demonstrate that, despite the fact that countries have begun to adapt UAS obligation objectives to take advantage of the opportunities brought about by technological development (i.e., the Internet) and provide both voice and data communication services, most UAS obligation objectives still rely on the improvement and expansion of wireline networks to provide service and access to populations in unserved and underserved areas. Efforts to provide UAS through wireline networks have produced incremental results, but countries should consider the benefits that technologies – such as for example wireless technologies – can bring to telecommunications networks and to the fulfilment of universal service and access goals.

2.1.3 Revision of Scope, Goals, Targets

At present, 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.

Services and targets need to be selected carefully. This is not an easy task, as technology changes, market realties change, and expectations of end-users change. Targets need to be feasible so that they can accommodate market developments. Most policies are designed for a five to ten year horizon, while a UAS programme generally sets targets for one to three years. The policy itself should allow for a process of review and update so that it may adjust targets.

In the European Union, the 2002 Universal Service Directive provided that as services to be included in the scope of universal and service access (UAS) will change as technology and society change, the scope of universal service (US) obligations must be reviewed every three years.

The Directive further provides that to be included in the scope of a UAS policy, a service has to satisfy two tests:

- In the light of social, economic and technological developments, has the ability to use the service become essential for social inclusion; and
- Are normal commercial forces unable to make the service available for all to use?

The scope of US in the EU was originally confined to telephony at a fixed location for voice calls, fax calls and data calls (for narrowband Internet using dial-up). The first review of the scope took place in 2006. Two services, mobile telephony and broadband Internet were new candidates for addition to the US's scope. However, after extensive consultation of Member States, neither mobile telephony or broadband Internet, was added. Although mobile telephony passed the first requirement-ability to use a mobile phone is essential for social inclusion-it was concluded that normal commercial forces had led to widespread availability and use of mobile phones. The conclusion was therefore that there was no need

for regulatory intervention to achieve universal mobile service. As for broadband, the overall proportion of the EU population using fixed broadband did not indicate use of the service by a majority of consumers, and broadband accordingly had not yet become necessary for normal participation in society such that lack of access implied social exclusion. The second revision (2008) came to the same result which was that mobile and broadband should not be included.

Module 4 of the *InfoDev* ICT Regulation Toolkit[137] suggests that for developing countries, modified forms of the general test regarding which services to include into the UAS scope might be preferred. These test questions relate specifically to whether a service can be accessed by everyone. They refer to uniform countrywide economic development, not just to a country's general economic development. A service such as broadband Internet might be essential to the overall economic development of a developing country. But while uniform countrywide economic development is desirable, it is rarely regarded as essential on the same time scale as the overall economic development of the country. The main driver for UAS may be economic before social factors come to the fore, so policy makers in developing countries could ask the following questions:

- In light of economic, social, and technological developments, has the ability to use the service become essential for uniform countrywide economic development or social inclusion; and
- Are normal commercial forces unable to make the service available for all to use, within a timescale consistent with the contribution of the service that will meet the Millennium Development Goals?

The Toolkit further suggests that if the answer to the first question is affirmative, then UAS goals are set for the service, and that if, in addition, the answer to the second question is affirmative, and normal commercial forces cannot guarantee that the goals are achieved soon enough, then regulatory intervention is needed.

2.2 Key Elements

KEY ELEMENTS TO ILLUSTRATE CLEAR OBJECTIVES, PRINCIPLES AND SCOPE OF UNIVERSAL ACCESS/SERVICE

- **UAS Goals:** Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)
- **Access vs Service:** A clear distinction is drawn between Universal Access and Universal Service
- **Service Targets:** A clear definition is given of specific ICT services or ICT applications that must be provided and to whom
- **Range of Services:** Services beyond fixed and mobile voice are included, which could include Internet / broadband and/or broadcasting)
- **Periodic Review:** Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for

[137] InfoDev ICT Regulation Toolkit, Module 4,. Available at: www.ictregulationtoolkit.org/en/Section.3156.html

2.3 Assessment of National Texts

2.3.1 Summary Chart

Country / Region	UAS Goals	Access vs Service	Service Targets:	Range of Services:	Periodic Review:
Angola	✓	×	✓	×	×
Botswana	×	×	×	×	×
Democratic Republic of Congo (DRC)	✓	×	×	×	×
Lesotho	✓	✓	✓	✓	×
Madagascar	✓	✓	✓	✓	✓
Malawi	×	×	×	×	×
Mauritius	✓	✓	✓	✓	✓
Mozambique	✓	✓	✓	×	✓
Namibia	✓	×	×	✓	✓
Seychelles	✓	×	×	×	×
South Africa	✓	✓	✓	✓	✓
Swaziland	✓	×	✓	✓	✓
United Republic of Tanzania	✓	×	✓	×	×
Zambia	×	×	×	✓	×
Zimbabwe	×	×	×	✓	×

2.3.2 Country Analysis

2.3.2.1Angola

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

"Offering access to a progressively larger number of Angolans" along with "extending basic services to rural and remote areas" and the "extension of telecommunication services to all areas in the national territory"[138] are defined as key objectives and regulatory aims respectively under the 2001 'Basic Telecommunication Law'. In both cases this is coupled with the recognition that affordable pricing and quality of service are germane to UAS which requires "adequate levels of quality and affordable prices"[139]

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

Although the 2001 'Basic Telecommunication Law' refers to the funding of "feasible universal access in rural, remote areas or other areas"[140], and the imposition of state intervention in case of "failure to meet

138 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 1.2, 1.3 (a) and 8.2 (d) respectively.

139 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 8.2 (d).

140 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 7.3 (j).

the universal access targets"[141], as well as its previously noted "General Plan for Universal Access"[142], nowhere is universal access defined. Likewise, universal service is specifically referred to in respect of USOs and the USF[143], but is also never defined, nor distinguished from universal access.

Service Targets: *A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom*

In the absence of the proposed "General Plan for Universal Access"[144], there is only a very limited definition in the 2001 'Basic Telecommunication Law' of the ICT services and applications in respect of which UAS is conceptualised. USOs and the General Plan for Universal Access are only conceived of as comprising "basic telecommunication services"[145] or "basic services"[146], by which is meant fixed line telephony – the "fixed system for subscribers"[147] and its associated infrastructure. These are to be provided by the "incumbent carrier that operates [the basic telecommunication network] under contract"[148]. No specific targets for fixed line telephony rollout are anywhere set out in the law.

Range of Services: *Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included*

As is indicated above and under 1.3.2.1 above, neither Internet nor broadband nor broadcasting are included in relation to UAS, let alone mobile telecommunications.

Periodic Review: *Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for*

There is no provision in the 2001 'Basic Telecommunication Law' for periodic review in relation to the proposed "General Plan for Universal Access"[149], or the charter governing the USF[150].

2.3.2.2 Botswana

UAS Goals: *Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)*

The 1996 Botswana Telecommunications Act requires the regulator to "take all reasonable steps to promote the provision, throughout Botswana, of such telecommunication services as will satisfy all reasonable demands for them"[151]. No other goals or key principles are defined. However, the forthcoming draft Universal Access and Service (USA) Policy claims to be animated by a vision "that all Batswana will have Universal service with affordable voice communications and access to internet and ICT services, regardless of their location within the country)"[152].

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141 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 22.2 (e).
142 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.
143 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 14 & 15.
144 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.
145 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.2.
146 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.
147 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 13.2.
148 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 13.4.
149 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.
150 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.2.
151 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 17 (2) (a).
152 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

No distinction between Universal Access and Universal Service is drawn in either the 1995 Telecommunications Policy or the subsequent Botswana Telecommunications Act or the later 2004 Maitlamo policy review.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The 1996 Botswana Telecommunications Act defines the services for which the regulator must "promote the provision" to include "emergency services, public call box services, and directory information services"[153] but no other specification of services or targets is made.

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

No additional services are covered in either the 1995 Telecommunications Policy or the subsequent Botswana Telecommunications Act. However, the draft Universal Access and Service (USA) Policy is set to bring "the whole communications sector, comprising telecommunications, internet related services, the postal, broadcast and print media (electronic and print)"[154] within the ambit of UAS.

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

No periodic review is specified in either the 1995 Telecommunications Policy or the Botswana Telecommunications Act. A review has, however, been undertaken and will result in the release of a Universal Access and Service (USA) Policy[155].

2.3.2.3 Democratic Republic of Congo (DRC)

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

Universal service is a key theme in the stated policy goals of the general 2002 Telecommunications Law in the DRC. The goals listed in the Telecommunications Law's introductory section include providing access to basic telephone and telex services in rural and urban areas at a reasonable cost, and reducing disparities between different regions in the country in terms of infrastructure and services.[156]

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

Universal service is defined in the Telecommunications Law as the right of every Congolese, whether living in a rural, urban or isolated area, to benefit from voice telephone, telex, and public telephone service.[157] The Law does not, however draw a distinction between Universal Access and Universal Service.

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153 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 17 (2) (a).

154 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

155 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

156 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo (2002)* at *Politiques des Télécommunications.*

157 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo (2002)* at *Du Service Universel.*

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The Law provides that operators' licences are to contain, among other things, the operator's service area and the level of the operator's contribution to research, education and standards-setting.[158]

Although the law does not list criteria for imposing universal service obligations, the text creating the universal service fund is found in the section of the law addressing the temporary exclusivity of "the public operator" (presumably, the incumbent).[159]

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

The Telecommunications Law provides that a universal service fund is to be established and that such fund is to be managed by the regulator, but does not mention any periodic reviews of the fund or universal service obligations.[160]

2.3.2.4 Lesotho

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

Although universal access and service are seen as key issues in the 1999 national Telecommunications Policy[161] and the 2000 Lesotho Communications Authority Act[162] there is no specific delineation of principles or goals. There is, however, considerable detail in a 2002 consultation on UAS undertaken by the regulator[163].

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

Access and service are very poorly distinguished in the 1999 national Telecommunications Policy[164]. A far clearer distinction is drawn in the 2002 consultation document on UAS issued by the regulator[165].

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158 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo* (2002) at Art. 21(a), (g).

159 *Id.* at Art. 39.

160 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en République Démocratique du Congo* (2002) at *Du Service Universel.*

161 Lesotho (1999) 'The Lesotho Telecommunications Policy', Ministry of Communications, Kingdom of Lesotho, Maseru, February 1999.

162 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, 48.

163 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf.

164 Lesotho (1999) 'The Lesotho Telecommunications Policy', Ministry of Communications, Kingdom of Lesotho, Maseru, February 1999.

165 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The 2002 consultation document on UAS issued by the regulator set out to define which "services are included in the universal basket of services"[166] and suggested that these should include "voice grade access [whether] fixed or mobile... basic fax and data services... long distance and international services... emergency services... directory services... operator services"[167].

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

The Internet and narrowband (below 64 kb/s) access are considered in the 2002 consultation document on UAS issued by the regulator[168]. A later set of broadcasting regulations does contain references to providing "coverage for the whole country at all times", ensuring that "all sectors of the society equitably" in terms of a public service broadcasting mandate, and to "bridging the digital divide"[169], suggesting that public broadcasting is seen to have a UAS mandate.

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

The 2000 Lesotho Communications Authority Act does not require periodic review of UAS objectives, principles, scope, targets and obligations.

2.3.2.5 Madagascar

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

"Access" is defined in the Law 2005-023 as providing a point of access to a public telephony network that is located no more than 10 km from the centre of a rural community of 500 or more persons, providing a public access point in an urban area that is within two kilometres of all habitations, ensuring the free routing of emergency calls to the nearest public emergency service (police, law enforcement, fire department, emergency medical services), and complying with national and international quality of service norms for telephony.[170]

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

Article 1 of the 2005 law defines universal service as affordable access for all to a telephony service within the context of the public telecommunications service and which assures the transmission of phone calls between subscribers. Any operator who accepts national coverage and is able to provide service may be entasked with the provision of universal service. Universal access, on the other hand, refers to service provision of ICTs with shared use of lines or terminals.

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166 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, p 6, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf.

167 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, pp 14, 15, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf.

168 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, p 6, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf.

169 LCA (2007) 'Broadcasting Classification Regulations 2007', Lesotho Government Gazette Extraordinary, Vol LII No10, Lesotho Communications Authority, Maseru, 14 February 2007, available online at www.lca.org.ls/docs/BROADCASTING_CLASSIFICATION_REGULATIONS_2007.pdf.

170 Law 2005-023. Art. 5(1).

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The 2005 Law provides that operators receive no subsidies to provide "access" within their service areas, which is defined as providing point of access to a public telephony network, that is located no more than 10 km from the centre of a rural community of 500 or more persons, providing a public access point in an urban area that is within two kilometres of all habitations, ensuring the free routing of emergency calls to the nearest public emergency service (police, law enforcement, fire department, emergency medical services), and complying with national and international quality of service norms for telephony.[171] Madagascar's Telecommunications Development Fund ("Fund") was created in 1999 to extend telephony service to unserved zones where such extension cannot be achieved without subsidies.[172] The Fund is also to support the expenses incurred by the regulator, the Office Malagasy d'Etudes et de Régulation des Télécommunications (OMERT), in studying and selecting operators to expand services.[173]

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

"Access" is defined in the Law 2005-023 as providing a point of access to a public telephony network. However, the 2006 Decree does provide for development projects to establish infrastructure and services aimed at promoting the development of ICT and telecommunications throughout the country.

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

The 2006 Decree provides for detailed revisions of annual targets and goals. Within this context, it is the regulator, OMERT, which determines which communities are in need of service and the level of subsidies necessary to achieve coverage, and which then submits a plan to the Ministry for approval.

In order to determine which communities may receive funding, OMERT first classifies communities in Madagascar into the following categories, which is then used for further evaluation:

- there is access to telecommunications services throughout the community or only a portion,
- service is provided only in manual/operator switching mode,
- service is limited to [public] access points,
- no service is available.

It then evaluates each community based on factors that include population density, economic activity, distance from the national network, volume and nature of demand, and level of investment and subsidies that would be necessary to achieve desired services.[174] Communities or groups of communities may themselves also file a request with the Ministry (but copying OMERT) for an extension of services to their locale.

OMERT is also required to conduct a study every three years that compares representative pilot projects in different situations, taking into account factors such as population density, nature of economic activities, and distance from the national network. Based on this study, OMERT then further classifies the projects based on the level of subsidy necessary. OMERT then gives this list, along with the list of communities with no service, to the Ministry.[175]

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171 *Id.* at Art. 5(1).

172 *Décret No. 99-191 Portant modalités de mise en oeuvre et de financement de l'accès aux services de télécommunication* ("Decree 99-191") at Art. 7(1).

173 *Id.* at Art. 7(5).

174 Decree No. 99-191 at Arts. 8-9.

175 *Id.* at Art. 9.

Based on the information provided by OMERT, the Ministry issues a ministerial order that establishes a triennial programme (revised annually) for extension of services, that takes into account the following factors:

1. projects that appear profitable are automatically included in the programme;
2. other projects are included with due consideration for competition for funding, and priority is given to those requiring the least amount of subsidy;
3. in considering the level of subsidy, any supplemental community funds are to be taken into account;
4. the programme may include projects to provide partial coverage, limited to public access points;
5. the programme must take into account experience in carrying out other projects, particularly with respect to implementation deadlines.[176]

Once the plan has been approved, OMERT submits a technical dossier to the Minister each year including an evaluation of demand and estimated investment requirements for each of the projects. This annotated list of projects is then submitted to national fixed operators to inquire whether any of them will serve the area.[177] The operators have three months to respond.[178]

2.3.2.6 Malawi

UAS Goals: *Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)*

The national ICT policy framework that preceded the 1998 Malawi Communications Act, had some UAS specifications, aiming to more than quadruple the number of fixed lines and to "ensure extension of modern telecommunication services to rural areas"[179]. The subsequent Rural Telecommunications Policy, which declares its "prime objective [as being] to ensure that the entire population of the country has access to telecommunication services"[180] is specific and detailed. Forthcoming ICT policy sets out the goal of ensuring that "all people in every part of the country have reasonable means of access to affordable essential ICT services"[181].

Access vs Service: *A clear distinction is drawn between Universal Access and Universal Service*

The 2002 Rural Telecommunications Policy does not define universal service, but defines 'access' as the "ability to reach a useable telephone as a means of communication"[182]. The subsequent ICT4D policy uses both terms – "universal services and access to information and communication technologies services and systems"[183] – but makes no attempt to distinguish them. Pending legislation currently does contain distinct definitions for universal access and universal service[184].

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176 *Id.* at Art. 10.
177 *Id.* at Art. 11 (3).
178 *Id.* at Art. 11(2).
179 Malawi (1998) 'Communications Sector Policy Statement', Ministry of Information, Republic of Malawi, Lilongwe , August 1998, p 3.
180 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 6.
181 Malawi (nd) 'National ICT Policy', Final draft, Ministry of Information, Republic of Malawi, Lilongwe, available online at www.malawi.gov.mw/ict_policy.pdf, p 15.
182 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 8.
183 Malawi (2003) 'An Integrated ICT-led Socio-Economic Development Policy For Malawi, Republic of Malawi, Lilongwe , June 2003, p 30.
184 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The 1998 Communications Sector Policy conceives of UAS solely in relation to fixed telephony and sets a target of 150 000 fixed lines by 2003[185]. No specific targets are given in any of the subsequent policy documents[186] or in pending legislation[187].

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

The overriding focus of the 2002 Rural Telecommunications Policy is in "basic telecommunication services" which it defines as "access to the public network designed for the transportation of voice communication"[188]. Additional services such as fax, Internet, e-mail and data are defined as "value-added" services. Pending legislation currently does provide for the evolution of UAS "in line with advances in technology, market developments and changes in user demand[189].

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

There is no provision for periodic review of the parameters of UAS policy and it implementation in either the 1998 Malawi Communications Act, or any of the related policy documents, nor in pending legislation, which makes the Minister the custodian of UAS policy[190].

2.3.2.7 Mauritius

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

The National Telecommunications Policy, 2004, provides that the traditional concept of universal service has been revised to place the emphasis on universal access, which is defined as the extension of the network and facilities to within reach of all persons in the service area. The emphasis in the 2004 Policy is not merely on access to fixed telephone service by all households, but rather on contact with the network in a meaningful way – being able to use the public access services (voice/fax services, the internet, electronic mail, text message services) whether it is located within a household or not. Access to these services must take account of different needs among the user population, including all citizens, regardless of gender, ethnicity, socio-economic level or geographic location, in national universal access and service objectives.

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185 Malawi (1998) 'Communications Sector Policy Statement', Ministry of Information, Republic of Malawi, Lilongwe , August 1998, p 3.

186 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, & Malawi (2003) 'An Integrated ICT-led Socio-Economic Development Policy For Malawi, Republic of Malawi, Lilongwe , June 2003, p 30, & Malawi (nd) 'National ICT Policy', Final draft, Ministry of Information, Republic of Malawi, Lilongwe, available online at www.malawi.gov.mw/ict_policy.pdf.

187 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe.

188 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 12.

189 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 27 (3) (g).

190 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 28 (3).

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

The National Telecommunications Policy, 2004, provides that the traditional concept of universal service has been revised to place the emphasis on universal access, which is defined as the extension of the network and facilities to within reach of all persons in the service area.

The Policy further provides that the Universal Service Obligation (USO) is the obligation placed on operators and service providers to ensure that standard voice/fax services, payphones, Internet services, text message services, E-mail, and prescribed info-communications services are available to the whole population in Mauritius at affordable and reasonable prices .

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The 2004 National Telecommunications Policy provides that the main elements of universal access include:

- Expand and maintain the availability of affordable telecommunications and ICT services to the public.
- Access are available at high transmission speeds, utilising state-of-the-art technologies.
- Educating the local people on the benefits of ICTs
- Access to operator assistance and directory information
- Access to the emergency services free; e.g. Fire brigade, Cyclone warnings.
- Access to network by persons with disabilities.
- Full range of public access to payphones, shop-like telecentres. Community telephone Centres, Community Internet terminals, Teleboutiques who market mobile phone service on a per-call basis.

The 2004 National Telecommunications Policy also provides that the USO shall ensure that standard voice/fax services, payphones, Internet services, text message services, E-mail, and prescribed info-communications services are available to the whole population in Mauritius at affordable and reasonable prices .

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

The emphasis in the 2004 Policy is not merely on access to fixed telephone service by all households, but rather on contact with the network in a meaningful way – being able to use the public access services (voice/fax services, the internet, electronic mail, text message services) whether it is located within a household or not.

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

The 2004 National Telecommunications Policy provides that the regulatory authority will be responsible for prescribing and developing specific indicators of info-communications access that reasonably meet the social, industrial and commercial needs of Mauritius. The appropriate targets will be identified by the regulatory authority to ensure that universal service and access is offered within a reasonable time frame and shall evaluate the progress periodically.

2.3.2.8 Mozambique

UAS Goals: *Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)*

The Telecommunications Law provides that a fixed and mobile telephone service shall be provided to guarantee universal telecommunications services, and that such services may be provided by public or private fixed or mobile operators.

The 2006 Telecommunications Strategy provides that basic telecommunications services also include internet and shall include direct public access in all rural localities as well as population centres with more than 500 inhabitants, as well as accessible public access within 5 kilometres distance of all population centres. The Strategy also provides for the creation of a National Emergency Telephone Service to be able to respond more efficiently to disasters and emergency situations.

Access vs Service: *A clear distinction is drawn between Universal Access and Universal Service*

There is no clear distinction and the law provides for access to universal telecommunications services.

Service Targets: *A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom*

The law[191] provides that INCM shall determine objectives annually and be responsible for the selection of projects. The Law also provides that licences shall specify universal service obligations, as appropriate.

Range of Services: *Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included*

Article 38 of the Law defines basic telephony services as fixed and mobile telephony. The 2006 strategy, however, also included internet amongst basic telecommunications services.

Periodic Review: *Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for*

The law provides for a yearly review of objectives by INCM and a regular review of projects, which shall take place at least once every two years.[192]

2.3.2.9 Namibia

UAS Goals: *Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)*

The 2008 integrated ICT policy aims to ensure "universal access to information and communication facilities in Namibia for all communities (to telephone, Internet, and multimedia services) [including] an access point in every community or village"[193]. The policy further sets out a series of guiding principles for the sector, including:

a. *Increased access – particularly to the Internet*
b. *Improved IT literacy and skills development*

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191 Law 08/2004, chapter V.
192 Law 08/2004, Articles 38 and 40.
193 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 13, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

c. *Competition and open markets*

d. *The promotion of user's influence in the development of the ICT sector*

e. *Protected rights of consumers*[194].

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

Universal access and service are distinguished, albeit not very clearly, in the 2009 overarching ICT policy, with the former described as "accessibility of a telephone, not necessarily in one's home" and the latter as "service available, as far as possible, to all the people"[195]. The concepts are neither defined nor distinguished in the 2009 Communications Act.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The only specific target set in the 2008 integrated ICT policy is the provision of an "access point in every community or village"[196] but what this implies is never formally defined.

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

Access to the "Internet, and multi-media services"[197] is included in the 2009 overarching ICT policy, but the latter term is never defined. The 2009 Communications Act provides for a formal process to define a full list of applicable services, although broadcasting remains specifically excluded[198].

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

The 2009 overarching ICT policy commits the "the Ministry [to] establish a formal mechanism for the periodic reviews of [the national ICT] policy, taking into consideration the information collected, the research done and feedback from key stakeholders"[199] but makes no specific UAS policy review commitments.

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194 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 14, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

195 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 29, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

196 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 13, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

197 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 13, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

198 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 57 (1).

199 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, p 26, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

2.3.2.10 Seychelles

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

There are no provision in the law relating to UAS goals. Section 3.1 of the ICT Policy, however, provides that the ICT Policy shall encourage the existence of a countrywide reliable and efficient ICT

infrastructure which shall have sufficient capacity and network speeds, provide improved connectivity, and be cost-effective and adaptive to the needs of the country.

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

There are no provisions in the law making a distinction between the two.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

There are no provisions in the law defining specific ICT services to be provided. The law just generally defines Universal Service as such telecommunication service as may be determined by the Minister as a service that needs to be provided by a licensee to an area or community not served, or not adequately served, by such a service;

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

There are no provisions in the law specifying the range of services to be provided.

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

There are no provisions in the law specifying the need for periodic reviews.

2.3.2.11 South Africa

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

The 2006 Electronic Communications Act sets a broad goal in respect of UAS, namely the "universal provision of electronic communications networks and electronic communications services and connectivity for all"[200] The Agency itself is given the mandate to "promote the goal of universal access and universal service" and to "encourage, facilitate and offer guidance in respect of any scheme to provide [UAS]" and to "foster the adoption and use of new methods of attaining universal access and universal service'.[201]

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

The 2006 Electronic Communications Act distinguishes between universal access which it defines as " universal access to" and universal service which it defines as the "universal provision" of "electronic communications network services, electronic communications services and broadcasting services". The

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200 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 2 (c). UAS was equally prominent in preceding legislation, the 1996 Telecommunications Act.

201 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 82 (1).

UAS Agency is further charged with providing a more precise and detailed determination of the concepts in practice.[202]

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The UAS Agency is required to define what constitutes "universal access by all areas and communities in the Republic to electronic communications services and electronic communications network services" and what constitutes the "universal provision for all persons in the Republic of electronic communications services and access to electronic communications networks".[203]. Following a public participatory process run by the Agency, the Minister in 2010 promulgated a detailed series of definitions and targets for UAS.[204]

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

The 2006 Electronic Communications Act specifically defines UAS to include "broadcasting services'. The definition of electronic communications within 'electronic communications services' and 'electronic communications network services' is sufficiently wide as to include the Internet and broadband, and possibly a good deal more: "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".[205]

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

While the 2006 Electronic Communications Act does not mandate periodic full-scale reviews of UAS parameters, the UAS Agency is required to review its UAS definitions "from time to time, with due regard to circumstances and attitudes prevailing" and the regulator "must at least bi-annually review and update, the prescribed definition of under-serviced area and the list of designated under-serviced areas".[206]

2.3.2.12 Swaziland

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

Section 5 of the Electronic Communications Bill 2009 defines universal service as the minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price as may be defined under regulations made under the law. Section 9 also defines the duties of the Minister as including the duty to define and

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202 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Sections 1 & 82 (3).

203 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 82 (3).

204 DoC (2010a) 'Determination Issued under the Electronic Communications Act, 2005 (Act No 36 Of 2005) with regard to Universal Access to and the Universal Provision of Electronic Communications Services and Electronic Communications Network Services', Notice No 85, Government Gazette No 32939, Department of Communications, Pretoria, 8 February 2010

205 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 1.

206 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Sections 82 (3) (a) & 88 (3).

monitor the policy related to the promotion of universal access and universal service within the Kingdom of Swaziland for the purpose of expanding the scope of coverage of electronic communications in such a way as to meet the requirements of economic and social development in the Country. Section 33 provides that the Commission, in consultation with the Minister, shall develop annual objectives with the purpose of ensuring that a specific set of services as defined in the law are made available, at the quality specified, to all end-users in the Kingdom of Swaziland, including those with disabilities, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

No distinction is made.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

Section 34 of the Electronic Communications Act, 2010, provides that services to be made available are the following:

> *(a) the provision of a connection to the public telephone network at a fixed location, at an affordable price, upon request, which connection must be capable of allowing end-users to make and receive local and international calls, facsimile communications, and data communications, at data rates that are sufficient to permit functional internet access, taking into account prevailing technologies used by the majority of subscribers, and technological feasibility;*
> *(b) the provision of a comprehensive directory of subscribers in a form approved by the Commission, whether printed or electronic or both, as the Commission may determine, and updated at least once (1) in each year;*
> *(c) the provision of a comprehensive telephone directory enquiry service;*
> *(d) the provision of public pay telephones sufficient to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones, the accessibility of such telephones to disabled users and the quality of service; and*
> *(e) the introduction of specific measures for disabled users and low income users.*

Section 35 provides that where such services are not already being provided commercially at the at the quality specified and at affordable prices, to all end-users within the Kingdom of Swaziland, the Commission may designate one or more licensees for such period as it may specify, to provide the so that the whole of the national territory can be covered. It also provides that the Commission may designate different licensees or sets of licensees to provide different elements of universal service or to cover different parts of the national territory.

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

Section 34 of the Bill provides that the services to be provided include:

> *(a) the provision of a connection to the public telephone network at a fixed location, at an affordable price, upon request, which connection must be capable of allowing end-users to make and receive local and international calls, facsimile communications, and data communications, at data rates that are sufficient to permit functional internet access, taking into account prevailing technologies used by the majority of subscribers, and technological feasibility;*
> *(b) the provision of a comprehensive directory of subscribers in a form approved by the Commission, whether printed or electronic or both, as the Commission may determine, and updated at least once (1) in each year;*
> *(c) the provision of a comprehensive telephone directory enquiry service;*

(d) the provision of public pay telephones sufficient to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones, the accessibility of such telephones to disabled users and the quality of service; and
(e) the introduction of specific measures for disabled users and low income users.

Section 1.4 of the draft NICI policy,[207] however provides for the need to build broadband capacity in the information and communications infrastructure and introduce new services to improve universal access and service quality.

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

Section 33 of the Electronic Communications Bill provides that the Commission, in consultation with the Minister, shall develop annual objectives with the purpose of ensuring that services are made available, at the quality specified, to all end-users in the Kingdom of Swaziland, including those with disabilities, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

2.3.2.13 United Republic of Tanzania

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

A series of objectives of USF are specified in the law, including: ensuring the "availability of communication services in rural and urban under-served areas"; promoting the "participation of the public and private sector in the provision of universal service"; creating a "framework for an open and efficient access to and use to and use of communication networks and services"; and promoting "widespread provision of quality services at affordable rates"[208].

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

Although 'universal services' is defined in the 2006 Universal Communications Service Access Act, no clear distinction is drawn between it and universal access.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

The 2006 Universal Communications Service Access Act mandates the USF to "specify the universal service obligation through defining a set of communication services that all users should have access to at an affordable price"[209] It goes further to specify the inclusion of: "access to a communications network able to support communication services"; "reasonable geographic access to public call boxes"; access to "emergency services, operator assistance and directory enquiry services"; and "providing customers with disabilities with the same or equivalent services as all other customers".[210]

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207 Draft NICI Policy, available at www.gov.sz

208 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 5.

209 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 6 (h).

210 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 13 (1) (b).

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

Broadcasting, the Internet and broadband are not specifically included, but the definition of communications services is sufficiently wide to as to enable their inclusion at the discretion of the regulator.

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

The 2006 Universal Communications Service Access Act does not mandate a periodic review of UAS parameters.

2.3.2.14 Zambia

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

The 2009 ICT Act requires the regulator to "promote the widespread availability and usage of electronic communications networks and services throughout Zambia by encouraging the installation of electronic communications networks and the provision of electronic communications services in un-served or under-served areas and communities"[211]. No specific goals or key principles are defined in the Act.

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

The 2009 ICT Act defines 'universal access' as "access by all citizens... to information and communications technology services"[212] but does not distinguish this from 'universal service', and elsewhere uses the two terms together without distinguishing between them.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

No UAS targets are specified in the 2009 ICT Act, which leaves this to the regulator to determine in relation to the USF[213].

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

The 2009 ICT Act contains a wide definition of the services in respect of which the regulator has UAS jurisdiction. They include Internet, broadband and broadcasting, specifically: "satellite networks, fixed, circuit and packet switch, internet, mobile terrestrial 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"[214].

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

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211 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Section 70 (2).

212 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka.

213 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Section 70.

214 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, 2 (1) (d).

There is no provision in the 2009 ICT Act requiring the regulator to review UAS parameters periodically. Conversely, there is nothing preventing the regulator from doing so.

2.3.2.15 Zimbabwe

UAS Goals: ***Key principles or goals for UAS are clearly defined in the law or other national policy document (e.g., Government policy)***

There are no overall UAS goals defined in the 2000 Postal and Telecommunications Act, which assigns the USF the goals of "assisting needy persons to obtain access to postal and telecommunication services" and supporting the "extension of postal and telecommunication services to underserviced areas and community centres" and assisting "disabled persons"[215]. Exactly the same set of funding goals is listed in the 2001 Broadcasting Services Act, which likewise sets no overall UAS goals[216].

Access vs Service: ***A clear distinction is drawn between Universal Access and Universal Service***

Neither concept is either defined or distinguished in either the 2000 Postal and Telecommunications Act or the 2001 Broadcasting Services Act.

Service Targets: ***A clear definition is given of specific ICT services and / or ICT applications that must be provided and to whom***

No specific service targets are stipulated in either the 2000 Postal and Telecommunications Act or the 2001 Broadcasting Services Act. 'Needy persons' is never defined, and 'under-serviced area' simply refers to one that is either "not, in the opinion of the Minister formed in consultation with the [regulator], adequately provided with postal or telecommunication services"[217] or one that is "not, in the opinion of the [regulator], adequately provided with broadcasting services"[218].

Range of Services: ***Services beyond fixed and mobile voice (Internet / broadband / broadcasting) are included***

The 2000 Postal and Telecommunications Act covers both fixed and mobile telephony, as well as Internet, e-mail and leased line services[219]. The 2001 Broadcasting Services Act covers a wide range of commercial, community and subscription broadcasting services, delivered terrestrially, via satellite or over the Internet[220].

Periodic Review: ***Periodic review of Universal Access and Service objectives, principles, scope, targets and obligations is provided for***

There is no provision in either the 2000 Postal and Telecommunications Act or the 2001 Broadcasting Services Act requiring periodic review of UAS parameters.

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215 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 74.
216 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 30.
217 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 73.
218 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 28.
219 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 34.
220 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 7.

2.4 International Case Studies

2.4.1 COMESA

The 2004 COMESA Policy Guidelines on Universal Access and Service[221] clearly define the objectives of Universal Access and Service, and state that they include the provision of ICT services in unserved and underserved areas where operators are reluctant to operate, due mainly to the uncertainty of recovering their investment. The Guidelines therefore put forward a number of parameters which services have to meet, including: affordability, accessibility, availability, sustainability, and quality of service.

The Guidelines distinguish between Universal Access and Service, defining Universal Access as a medium of communication such as telephone, fax, or email, as well as access to information with regard to various contents accessible through Internet or other computer network based applications. Universal Service, on the other hand, is defined as making services available and accessible to customers at access points with services delivered at the premises in response to customer demand. The Guidelines also specifically provide for a definition, stating that for COMESA, Universal Service are addressed by promoting and maintaining availability at an affordable price of an ICT point of presence within the shortest possible walking distance from everywhere.[222]

2.4.2 ECOWAS

The ECOWAS Supplementary Act on Universal Access/Service, Articles 7, 8 and 13 provide that without prejudice to more generous domestic measures, Member States shall commit themselves to taking the necessary steps to ensure that, at a minimum, the entire populations within their territories have access to the services listed in the Act, regardless of their geographic location and at affordable prices.

Member States shall ensure that requests for connection to a telecommunication network are satisfied by at least one operator and may, if necessary, designate one or more operators to that effect, such that all parts of the national territory are covered. The connection provided must be such as to enable the user to make domestic and international calls, send and receive voice messages and fax and data transmissions, and connect to the internet with an adequate transfer rate.

Member States shall determine the most effective and appropriate approach for ensuring the implementation of universal service, with due respect for the principles of objectivity, transparency, non-discrimination and proportionality. They shall endeavour to keep market distortions to a minimum, particularly where they take the form of service provision at rates or under conditions which differ from those normally prevailing in a commercial operation, while protecting the public interest.

The Act also provides that Member States shall periodically review the scope of the universal service, in particular with a view to making proposals for its modification or redefinition. The first such review shall be held no later than two years following the date of entry into force of this Supplementary Act, and thereafter a review shall be held every three years. The review shall take account of social, economic and technological developments, and shall have particular regard to data mobility and transfer rates for the technologies most widely used by the majority of subscribers. Member States shall inform the Commission of any changes.

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221 COMESA Policy Guidelines on Universal Service/Access, August 2004.

222 COMESA Policy Guidelines on Universal Service/Access, August 2004, Sections 2 and 3.

2.4.3 EU

The basic requirement for universal service in the European Union is that the telephony services are available to all people, regardless of geographic location, at an affordable price. NRAs are required to ensure that this takes place by placing obligations on designated network operators to ensure that a defined minimum set of services of specified quality are provided. The 2002 Directives also includes certain safeguards and mechanisms to protect against prices being set too high and against refusals to install subscriber lines in high cost regions.

The EU defines the basic services that NRAs are required to ensure are provided in their jurisdictions:

- Access at a fixed location upon request, to enable users to make and receive local, national and long distance calls, fax communications, and to enable them to have functional access;
- At least one comprehensive directory and one comprehensive enquiry service comprising the numbers of all fixed and mobile subscribers who so wish;
- Availability of public pay phones over the whole territory;
- Measures that ensure that the disabled have access to the same services at an affordable price.
- *(since 2005)* Required to supply connection that provides "functional" Internet access (FIA), which is limited to a single narrowband connection and does not extend to ISDN or broadband.
- Must respond to all reasonable requests to install a telephone line, offering the same prices irrespective of location.

In accordance with Recital 8 of the 2002 Directive, the wording "access at fixed location" refers to the end-user's primary residence (where several members of a household can share the connection), and not to a requirement for operators to use fixed technology; i.e., there are no constraints on the technical means – whether wired or wireless – by which the connection is provided. The reference to data communications at data rates that are sufficient to permit functional internet access is elaborated as a requirement limited to a single narrowband network connection, which are capable of supporting data communications at rates sufficient for access to online services such as those provided via the public internet. This must allow satisfactory internet access, with Member States able to require the connection to be brought up to the level enjoyed by the majority of subscribers. This flexible requirement for the functionality of internet access was in particular designed to allow the accession countries to exploit mobile/wireless technologies to deliver universal service to a higher proportion of the population.[223]

In accordance with the Directive, the Commission is required to review the scope of the universal service every three years in the light of technological, social and economic developments, taking into account in particular mobility and data rates in the light of prevailing technologies used by the majority of subscribers.[224] The Directive establishes certain considerations to be weighed by the Commission in deciding whether a service are included in the scope, namely: a minority of consumers would be excluded from society by the lack of availability or non-use of specific services that are both available to and used by the majority, and inclusion of these services within the scope would convey a general net benefit to all consumers in cases where they are not provided to the public under normal commercial circumstances.

2.4.4 Republic of Congo (Brazzaville)

The 2009 Electronic Communications Law provides that government shall guarantee the necessary conditions to promote universal access and service for the benefit of economic growth, employment and

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[223] Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Recital 8.

[224] *Id.*, at Article 15.

development, to improve the provision of public services in the health, education and for rural development. The Law also provides that universal service shall benefit social and political cohesion by ensuring that citizens living in rural and isolated areas may also benefit from ICTs.[225]

The 2009 Electronic Communications Law defines Universal Access and Service as being access to a minimal set of services throughout the country to the whole population, notwithstanding their geographical location and at affordable prices.[226]

Article 87 of the Electronic Communications Law provides that the minimal services to be provided include:

- The availability throughout the country of a national broadband infrastructure to transport voice, data and video (images);
- The response by at least one operator to requests for connection to an electronic communications access network, independent of geographic location and at affordable prices ;
- Access to directory services and enquiry services;
- Access to emergency services;
- the availability of a wide range of public access options of good quality which shall include public phones, public telecentres and multiple service community centres, and which shall be available in sufficient number, spread equally geographically, and be affordable;
- high speed Internet access in schools. hospitals, security services, libraries, municipalities and other community centres
- access to Broadband services in post offices included in universal postal service;
- existence of content, application and services adapted to local needs ;
- capacity building and training programmes aimed at integrating ICTs in all levels of society;
- taking all necessary measures to benefit certain social groups when required.[227]

Minimal services as provided for in the Law (Article 87 – see above), include Broadband an high-speed Internet.

The Electronic Communications Law provides that government shall revise universal service policies and regulations regularly, but does not give a specific timeframe[228].

2.4.5 Morocco

Universal service is defined in the general telecommunications law and seeks the nation-wide expansion of services, including basic telephony and value-added services, at affordable prices and at a minimum level of quality.

The scope of universal service has been expanded to include an additional aménagement du territoire concept, which may be translated as “development of the national territory.” In the government’s response to the International Telecommunication Union (ITU) ICT Eye Survey on Universal Service, authorities reported that the following services are included in the definition of universal service: fixed residential, public payphone, mobile cellular, mobile payphone, fax, dial-up and broadband Internet access, telecentre, emergency and directory services.

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225 Congo (2009), Loi portant réglementation du secteur des communications électroniques, Article 85.
226 Congo (2009), Loi portant réglementation du secteur des communications électroniques, Article 5.
227 Congo (2009) Loi portant réglementation du secteur des communications électroniques, Article 87.
228 Congo (2009) Loi portant réglementation du secteur des communications électroniques, Article 88.

The fund's priorities are rural public telephony, installation of community Internet centres, and expansion of broadband capacity.

The law provides for the possibility of revising Universal Service through the revision of the list of value added services by Ministerial Decree.

2.4.6 Uganda

In March 2005, the Uganda Communications Commission (UCC) issued Communications (Universal Service) regulations. These regulations outline a comprehensive universal service policy for Uganda. While the regulations address the concept of a universal service obligation, they also address the notion of universal access, specifically the ability to ensure development of an open and efficient framework to support access to and use of quality and affordable basic communication services.[229] The regulations also provide for the need to determine mechanisms to monitor the delivery of universal service and review of its level over time.[230]

The universal service obligation is defined in the regulations as a minimum set of services of specified quality which is all available to all users independent of their geographical location at an affordable price.[231] The regulations go on to detail the services as follows:

- Connection to a fixed communication network able to support voice telephony, fax and data transmission;
- Reasonable geographic access to public call boxes throughout Uganda;
- Ability of consumers to access emergency and free services, operator assistance and directory inquiry services;
- Ability to meet the needs of people with disabilities;
- Delivery of affordable basic communication services to all customers on reasonable request;
- Provide customers with disabilities with the same or equivalent services as all other customers so as to have access to the same level of universal service; and
- Reasonable geographic access to basic postal services across the country.[232]

In addition to these services, the regulations note further that there are reasonable levels of access to payphones for all in Uganda on an equitable basis, as well as highlighting that services which the market has provided to most people, and have over time become essential, are generally available to all. The regulations carry the notion of equity further to address equitable accessibility for basic communications service to all wherever they reside or carry on business.[233]

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229 The Communications (Universal Service) Regulations at Art. 3.
230 The Communications (Universal Service) Regulations at Art. 3 (j).
231 *Id*. at Art. 4.
232 *Id*. at Art 5.
233 *Id*. at Art 5 (d).

Part 3

3 Variety of Strategies and Policy Mechanisms to Promote Universal Access and Service

3.1 Background

The 2002 SADC UAS policy guidelines provide the following in relation to the availability of a variety of strategies and policy mechanisms to provide universal access and service:

Strategies for achieving universal access and service include amongst others:

4.1 Promotion of fair and effective competition as a fundamental strategy for achieving affordability and network development;
4.2 Establishment of Universal Service Fund as auxiliary vehicle for the financing of universal service / access;
4.3 Imposition of Universal access and service obligations on licensed operators to ensure delivery of services in under-served areas;
4.4 Encouragement of community participation in the provision of telecommunication services;
4.5 Encouragement of local loop unbundling when competition is introduced;
4.6 Application of preferential or discounted tariffs for achieving good quality access to schools, clinics, telecentres or other community access centres; and
4.7 Liberalisation of some of the market segments such as:
4.7.1 Customer Premises Equipment;
4.7.2 Radio Paging;
4.7.3 Internet Service Providers;
4.7.4 Data Communications; and
4.7.5 Value-Added Services.

3.1.1 Imposition of USOs

The concept of Universal Service Obligations was introduced as telecommunication services were liberalized, to accommodate the potential risk that uneconomic services which are nevertheless socially essential would cease to be provided. In the context of the European Union's 1998 legislation, such services were defined as being "universal" so as to create a mechanism to ensure that they would be maintained in an era of free competition. The option of requiring telecommunications operators to guarantee the provision of services through conditions attached to their operating licences was thus introduced in the 1998 EU telecommunications package. The theory was that each operator in an EU Member State might have a set of Universal Service Obligations (USOs) written into the licence by the national regulatory body, which would have the ultimate sanction of revocation or non-renewal of that licence if the obligations were not discharged in an acceptable fashion. As it would not be necessary for every operator to provide a full range of universal services, such as public payphones or emergency call centres, it would be acceptable for those who did not provide to contribute to the costs of those who do – the "pay or play" principle. This led to the notion of the establishment of a Universal Service Fund (USF), to which all operators would contribute in order to finance the provision of uneconomic services which were designated as "Universal Service". Operators who provided the designated universal services (the "players") would therefore be net recipients from the fund, while others would be net contributors.

3.1.2 Regulatory Reform

Since markets have been opened to competition, policy makers and regulators have been using a variety of tools to achieve universal access or service. Good practice is that before using scarce public resources, governments and regulators exhaust available non-investment avenues to extend access. Often

regulatory reform is one of the first steps in achieving universal access and service. This includes developing policies, regulations, and practices, including privatization design that goes beyond the more traditional framework of simply imposing obligations on designated universal service providers, which in most cases was the incumbent fixed-line operator. Such tools create incentives for the private sector to extend universal access to ICTs, as well as enacting enabling licensing and interconnection frameworks.

Regulatory Reform generally seeks to introduce competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre through the definition of a strong regulatory framework which accommodates convergence and competition (Technology Neutral and Flexible Licensing, Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing).

3.1.2.1 Licensing

As telecommunications markets have liberalised, countries have moved away from restrictive individual licensing regimes, which can limit the scope of technologies and services that an operator can offer, to a variety of more progressive licensing options such as service or technology neutral licensing regimes. Unified (converged) licences, which can be described as a licence that allows an operator to offer a panoply of services under one authorisation,[234] seem to be well-suited for countries trying to expand their telecommunications networks to reach as much of the population as possible. This type of regime opens the scope of technologies and services that can be offered by one operator and thus increases participation of new market entrants, encourages the introduction and use of new technologies, and also facilitates the process of obtaining a licence. Countries such as India, Australia, individual member states of the European Union, Japan, Kenya, Malaysia, Mali, Mauritius, Singapore, Tanzania, and Uganda[235] have all introduced some form of converged licensing regime based on the characteristics and needs of their markets.

Regulators should follow a strategy of aggressive all-service licensing of operators willing to provide services in currently uncovered areas. In some countries, operators are expressing a preference for alternatives, such as accepting reasonable rural build-out targets in their licence, or negotiating ex-ante specific rural universal access and service (UAS) targets with the regulator in exchange for relief from UASF levies or taxes.

In establishing the framework necessary to provide universal service and access to rural populations, a country also should consider a licensing regime that will allow it the flexibility to take advantage of technological development and convergence. Build-out targets are increasingly used in licensing procedures as an important factor to evaluate applications alongside the bid price. Thus, for example, in Uganda, the Second National Operator's bid evaluation criteria included a network rollout plan in addition to the bid price. In India, the regional local fixed operator bid evaluation criteria gave weight to rural coverage plans, but only 15 percent compared to 72 percent weight of the amount of licence fee offered.

Under these models, investment in the sector, rather than short-term fiscal benefits, is treated as a major or primary consideration-ensuring a higher rate of investment over the long run (Dymond, Juntunen, and Navas-Sabater 2000). At the same time, licences need to be designed carefully to ensure that the investments encouraged under the scheme will actually help meet access targets.

Brazil is an example of a country that, although it has developed a funding mechanism, generally achieves its universal objectives through coverage obligations imposed on its licensees. In fact, one could argue

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[234] Ndukwe, E (2005) 'The Challenge of Creating Policy and Regulation in a Converged ICT Era', Telecom World Africa Conference 2005, Cape Town, South Africa, p. 7.

[235] Licensing Approaches in an Era of Convergence, Global Symposium for Regulators, Geneva, Switzerland, 8-10 December, 2004.

that Brazil's coverage obligations are more effective at achieving universal service goals than any of the special telecommunications development funds that have been created to fund or subsidize telecommunications projects. Because the Brazilian legal framework uses a variety of tools to achieve universal service, it took advantage of the new licences being issued for third generation (3G) mobile services and imposed more expansive coverage obligations on those new 3G licensees than obligations previously imposed on mobile licensees. In so doing, Anatel recognized that imposing coverage obligations through licences brings more immediate benefits to the population than other funding mechanisms. To this end, during the last tender for 3G mobile licences, areas of low demand were not licensed in their own right, but were included as coverage obligations along with the more populous licences.[236] For example, winners of the São Paulo metropolitan licences (in the southeast of the country) are obligated to provide coverage in the northern states of Amazonas, Amapá, Pará, Maranhão and Roraima.

In addition, specific coverage obligations were also detailed in the licences, according to the following chart:

Table 1 – 3G Licences Coverage Obligations

Target	Threshold population	Coverage Obligations
I.	Without cellular service	Licensees will have the first 2 years to provide mobile services to 25% of the municipalities of each area acquired that still does not have cellular service.
II.	Less than 30,000	Licensees will provide 3G coverage to 15% of all municipalities within 5 years, and reach 60% coverage in all municipalities within 8 years.
III.	30,000 – 100,000	Licensees will provide 3G coverage to 50% of all municipalities within 5 years.
IV.	More than 100,000	Within 1 year, licensees must cover 50% of state capitals and municipalities with more than 500,000 inhabitants; within 2 years licensees must cover 100% of state capitals and municipalities with more 500,000 inhabitants; within 3 years, licensees must cover 50% of municipalities with more than 200,000 inhabitants; within 4 years, licensees must cover 100% of municipalities with more than 200,000 inhabitants; within 5 years, licensees must cover 100% of municipalities with more than 100,000 inhabitants.

Source: Anatel.

3.1.2.2 Flexible Spectrum Policy

Establishing flexible spectrum policies as well as technology-neutral telecommunications policies that include a flexible and adaptable licensing regime can facilitate the entry and use of new and innovative technologies and provide a wider range of participants to achieve universal service and access goals. Revising universal service obligation objectives and implementing suitable mechanisms for the disbursement of universal service fund resources can also help in taking full advantage of multiple resources and technological development to better serve and benefit underserved and unserved populations.

[236] *Edital de Licitação* (*"Bidding Terms"*) No. 002/2007. The tender was concluded in Dec. 31, 2007 and the 3G licences were signed and published on the Brazilian Official Gazette in Apr. 29, 2008.

Recently, new technologies have begun to provide unserved and underserved areas with faster service and more affordable access to communication. Mobile technologies are being used increasingly to provide rural and difficult to reach communities with fixed-wireless and mobile public payphones.[237] In many developing countries, mobile networks have become a substitute for fixed networks because (i) they can provide wider coverage, (ii) they can usually be easily and quickly deployed at a lower cost, (iii) their management and maintenance is simpler, and (iv) pricing schemes applied by mobile operators have made access to telephony service affordable for the urban poor.[238]

As third generation (IMT-2000 or 3G) wireless technologies are deployed around the world, they can offer both voice and data services at affordable costs and thus can provide even greater access to communications services. Third generation technologies, such as CDMA 2000 and WCDMA can support both voice and broadband wireless access, transmit large amounts of traffic in a small amount of spectrum, as well as provide wider coverage. CDMA operators in India (as a result of Unified Licences being introduced) have been able to build networks quickly and are offering low price plans in underserved areas.[239] In addition, operators in Brazil, China and the United States are using CDMA 2000 technology to expand and deploy Internet access across the country, including remote areas. In Peru, a clinic in the Andes is using 3G wireless voice and data equipment to communicate with medical professionals around the world to provide medical assistance to patients in this remote area of the country. The clinic, which had no connectivity of any kind until February 2006 and no fixed line communications, has been able to treat over 3,000 residents in the area. In the same manner, EV-DO high-speed wireless technology is being used in the Democratic Republic of the Congo to access vital patient information quickly and to notify doctors in case of emergency.[240]

3.1.2.3 Technology Neutrality

A critical factor in establishing progressive policies for achieving universal service and access is technology neutrality. In other words, when establishing universal service and access policies, countries can maximise the opportunities for achieving their universal service and access goals by not limiting technological choice.[241] By avoiding traditional paradigms that rely only on wireline operators to achieve Universal Access and Service, countries can encourage the use and application of innovative technologies and foster a more competitive and dynamic market that can further support universal service obligation goals by introducing technology-neutral policies. In turn, such policies will be conducive to a universal/access policy that will better answer the needs and demands of a country's rural population.

Other technologies such as Voice over Internet Protocol (VoIP), very small aperture terminals (VSAT), and broadband over power-line (or power-line communications) which are not as widely used at present, are also options that can provide connectivity inexpensively and effectively to rural areas, and can help countries achieve universal service and access.[242]

Given the importance of new technologies in reaching unserved and underserved rural populations, regulatory authorities are modifying their universal service and access 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 universal service and access goals.

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237 Mobile Operators: Their Contribution to Universal Service and Public Access, January 2003, pp. 7.

238 UMTS Forum Report "Benefits of Mobile Communications for Society", June 2004, Report No. 36.

239 Opportunity for All: Using Wireless to Provide Universal Access to Telecom Services, pp. 2-6.

240 3G Creating Digital Multimedia Access Opportunities Around the World, 3G CDMA Wireless Technologies Benefiting Society.

241 What Rules for Universal Service in a an IP-enabled NGN Environment? Background Paper, International Telecommunication Union, April 2006, p. 20.

242 A New Model for Rural Connectivity, Development Through Enterprise, Al Hammond and John Paul, May 2006.

3.1.3 Innovative supply-side strategies

Recently, countries have 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 fund broadband, since implementation of such projects has generally been seen to require the involvement of both private sector financing and public authorities.

Complementary strategies can be applied to ensure that objectives and targets are met through a mix of tools – such mechanisms may include: build-out requirements, the introduction of telecentres and multi-purpose community centres; mechanisms to promote private sector involvement, such as micro-credit programmes; public-private partnerships, 'build, operate and transfer' (BOT) or 'build, transfer and operate' (BTO) arrangements; incentives to involve cooperatives and community-owned networks,; regional operators; etc.

Good international practice shows that inclusion of private sector through Public Private Partnerships (PPPs) and profit-sharing can provide a number of benefits: access to private finance, reduced operational risk for the public sector, faster delivery of capital projects, project management skills, entrepreneurship, and innovation. Public-Private Partnership (PPP) have been used to deliver projects or services (the development of a broadband network for example), sharing the risks and the benefits of the effort. In this model, the government partners with industry players or other appropriate private agencies to leverage the complementary strengths of each partner. The extent of private sector participation can range from sharing risk on a small scale to almost total control of the property and project management. The establishment of PPPs has been seen by players to help fill the gaps in quality, speed, and efficiency in the provision of services by the public sector, especially to rural areas.

The Eastern Africa Submarine Cable System (EASSy) project provides an example of infrastructure development in Africa shared by operators and international lenders. EASSy is a submarine fibre-optic cable from South Africa to Sudan, with connections to 10 countries along its route. The project was developed jointly by more than 20 operators, primarily from East and Southern Africa, with support from the International Finance Corporation, European Investment Bank, African Development Bank, Agence Française de Développement, and Kreditanstalt für Wiederaufbau. The system was designed to minimize the problems associated with the absence of effective competition and regulation. A special purpose vehicle that is itself a member of the consortium and owned by a group of smaller operators from the region is allowed to sell network capacity in any market in the region on an open-access, non-discriminatory basis – providing competition to other members of the consortium.[243]

In the European Union, Member States are allowed to use public funding, including PPPs, to support the development of broadband in underserved areas. Public funds may be used where the market has failed to invest in adequate infrastructure, provided that schemes are "well-justified and proportionate to remedy a well-defined market failure."[244] As of February 2010, the European Commission had approved almost 60 broadband projects satisfying these requirements. As a specific example, in France the government launched the DORSAL project to develop a backbone network capable of delivering access to high-speed Internet. The project is a public-private partnership with a 20-year concession to build and operate a backbone network and construct a WiMAX broadband network. The project cost was estimated at €85 million, split between the public (45 percent) and private (55 percent) sectors. The fibre-optic backbone network was completed in mid-2007 and has led to downstream competition, with customers

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243 Williams, Mark D.J., "Advancing the Development of Backbone Networks in Sub-Saharan Africa," *Information for Communication and Development 2009*.

244 European Commission, Questionnaire for the Public Consultation on Universal Service Principles in E-Communications (Mar. 2010).

now able to access third-party service providers offering a wide range of broadband services in competition with France Telecom.[245]

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 multi-pronged 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.*"[246]

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.

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)."*[247]

In Latin America, all 19 members of Regulatel[248] have established during the last decade some form of universal access programmes or initiatives aimed at increasing access to telecommunications networks and services.

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245 Ingénieurs Conseil et Economistes Associés (ICEA). 2008. "Strategies for the Promotion of Backbone Communications Networks in Sub-Saharan Africa." Study commissioned by World Bank.

246 WATRA Guidelines, available at: www.itu.int/ITU-D/treg/projects/itu-ec/Ghana/modules/Compil-Guidelines_final.pdf

247 EC/ITU Harmonization Project West Africa: Report on Universal Access/ Service, available at: www.itu.int/ITU-D/treg/projects/itu-ec/Ghana/modules/FinalDocuments/Universal_Service.pdf

248 Members of Regulatel include: CNC of Argentina, SITTEL of Bolivia, ANATEL of Brazil, SUBTEL of Chile, CRT of Colombia, ARESEP of Costa Rica, MIC of Cuba, INDOTEL of Dominican Republic, CONATEL of Ecuador, SIGET of El Salvador, SIT of Guatemala, CONTATEL of Honduras, COFETEL of Mexico, TELCOR of Nicaragua, ANSP of Panama, CONATEL of Paraguay, OSIPTEL of Peru, URSEC of Uruguay and CONATEL of Venezuela.

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:

- Market liberalisation combined with regulatory initiatives including universal access obligations and special regulations and conditions which favour projects and operations in high-cost or low-income areas (almost all countries have adopted aspects of this approach)
- Universal Service Funds (USFs) that provide partial subsidies for programmes largely aimed at stimulating private sector provision of infrastructure in rural or unserved regions (12 countries out of 10 are using funds)
- Other financing methods and project initiatives by national, state and local governments, cooperatives, NGOs and others (13 countries). An increasing number of private operators are also putting in place programmes aimed at expanding coverage in high cost rural areas and to increasing demand among lower income consumers
- State-mandated and controlled approaches using cross subsidies and other financing mechanisms aimed at state-owned companies (3 countries).[249]

In Singapore, Government decided in September 2008 to select a proposal from the *OpenNet Consortium* to design, build and operate the passive infrastructure for the Next Generation Broadband Networks in Singapore. The Government will provide a grant of up to S$750 million to the NetCo to support the network rollout. The aim of the project is to ensure that by 2012, homes and offices nationwide will be connected to Singapore's ultra high-speed and pervasive Next Generation National Broadband Network. OpenNet is led by Axia NetMedia Corporation with Singapore Telecommunications Ltd, Singapore Press Holdings Ltd and SP Telecommunications Pte Ltd as the other members of the consortium. The NetCo Request-for-Proposal (RFP) was launched on 11 December 2007 and closed on 5 May 2008 with proposals from two consortia, namely Infinity and OpenNet. As the selected NetCo, OpenNet will design, build and operate the passive infrastructure of the Next Generation National Broadband Network that will be capable of delivering speeds of up to 1 Gbps and beyond.

To encourage premise owners to connect their homes and businesses to the network, OpenNet is required to waive installation charges for home and building owners when the network first reaches their premises. Under a Universal Service Obligation, which will take effect from 2013, OpenNet will also fulfil all subsequent requests to install fibre termination points in homes, offices and buildings. In its proposal, OpenNet committed to deploy and own all the fibre optic cables and offer wholesale dark fibre services to downstream operators on a non-discriminatory basis. OpenNet also committed to make use of relevant existing underlying passive infrastructure assets, such as ducts, manholes and exchanges, belonging to SingTel, to facilitate the deployment of its fibre network.

In launching the project, the Singapore Government underlined that it firmly believed that Effective Open Access through a structural or operational separation would be key to the achievement of a vibrant and competitive next generation broadband market, and that it would therefore consider the need for legislation to entrench Effective Open Access in this market over the long term.[250]

3.1.4 Innovative demand-side strategies

Some degree of government intervention may be required to enable and complement the market. Any guidelines should therefore also have a user focus so that available funds can finance projects for

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249 Draft Regulatel Report on "New Models for Universal Access in Latin America", October 2006.

250 IDA Press Release: "Government Selects OpenNet's Proposal To Build Passive Infrastructure", available at: www.ida.gov.sg/News%20and%20Events/20080926174755.aspx?getPagetype=20

children, women, people with disabilities, schools and other public facilities. This may include government measures to lead demand development as a major user. When governments (national, regional, local) define policies for uptake, they also become major users of communications services (e.g. school connectivity and other education projects, government intranet projects, e-procurement, online taxes and public records). Articulating government demand can drive uptake and reduce commercial risk of investments.

Innovative demand-side strategies mean institutional demand creations (e-government, government as major user, provision of access to ICT in public facilities/anchor institutions such as schools, libraries, health and community centres), e-applications (e-health, e-education, etc.), definition of requirements and provisions for persons with special needs (person with disabilities, youth and women, elderly, etc.), government subsidy and voucher programmes, application of preferential or discounted tariffs.

The guidelines are flexible enough to also allow financing mechanisms to procure ICT equipment like computers, white boards, Local Area Networks, etc.

There is also an important role for the careful definition of procurement policies to promote accessible ICTs for persons with disabilities. If a universal service policy were to become a large procurer of ICT equipment, the financing of such efforts could influence the kind of equipment that is available in markets for persons with disabilities in that country by insisting that all equipment be made accessible. This is what happens in the US (all procurement by the US government must be for accessible equipment. Considering the size of purchasing power of the US government, it means that manufacturers selling in the US only sell accessible equipment!). The same could occur for US Funds in developing countries.

This is 100% in line with the UN Convention on the Rights of Persons with Disabilities – see also the Connect a School, Connect a Community Toolkit Module on Persons with Disabilities[251]. This section also refers to the relevant section of the e-Accessibility toolkit.

3.2 Key Elements

KEY ELEMENTS TO ILLUSTRATE VARIETY OF STRATEGIES AND POLICY MECHANISMS

- **USOs:** Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services
- **Liberalisation:** Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)
- **Strong Regulatory Framework** enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing
- **Funding:** Definition of range of UAS financing mechanisms including establishment of USF
- **Supply-side Innovation:** Mix of complementary and innovative strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation
- **Demand-side Innovation:** Mix of complementary and innovative strategies to stimulate demand for access to ICT networks and services

[251] Available online at www.connectaschool.org/itu-module/15/384/en/persons/w/disabilities/connectivity/Section4.4_procurement_policies/

Part 3

3.3 Assessment of National Texts

3.3.1 Summary Chart

Country / Region	USOs:	Liberalisation:	Regulatory Framework	Supply-side Innovation:	Demand-side Innovation:
Angola	✓	✓	×	×	×
Botswana	✓	✓	×	×	×
Democratic Republic of Congo (DRC)	✓	✓	×	×	×
Lesotho	✓	✓	✓	×	×
Madagascar	✓	✓	✓	✓	✓
Malawi	✓	✓	✓	×	×
Mauritius	✓	✓	✓	✓	✓
Mozambique	✓	✓	✓	✓	✓
Namibia	✓	✓	✓	×	✓
Seychelles	×	✓	×	✓	✓
South Africa	✓	✓		✓	✓
Swaziland	✓	✓	×	✓	✓
United Republic of Tanzania	✓	✓	✓	✓	✓
Zambia	✓	✓	✓	✓	✓
Zimbabwe	✓	✓	✓	×	×

3.3.1.1 Angola

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

The 2001 'Basic Telecommunication Law' provides for "Universal Service obligations [to be] imposed on public utility carriers" which are not defined in the law, but would presumably be more fully identified in the putative "General Plan for Universal Access"[252],

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)*

The 2001 'Basic Telecommunication Law' recognises the need to "promote public and private investment", to "guarantee competition among service operators… without special or exclusive rights" and to "[promote] the introduction of new operators"[253], Liberalisation of the sector is, however, still relatively limited, with four licensed fixed line operators (MS Telecom, MundoStatel, Nexus & Wezacom), two licensed mobile operators (Unitel & Movicel), and four licensed ISPs (Angola Telcom, MS Telcom, Snet

252 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.
253 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 1.3 (a), (b) & (c).

& Multitel)[254]. The SAT-3 cable landing station at Cacuaco is currently a monopoly, but further landing stations are planned for the West Africa Cable System (WACS) in 2011 and Africa Coast to Europe (ACE) in 2012[255]. The privatisation of Angola Telecom started in mid-2009 with the sale of a majority in its mobile unit, Movicel. The creation of Infrasat as an independent satellite business unit, and Angola Cable for international fibre connections, are additional steps towards greater liberalisation of the country's telecom market, improved efficiency of the national telco and its eventual complete privatisation.[256]

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

Decree 45/02 of 10 September provides for the right of citizens and legally constituted entities to have equal, non-discriminatory access to public telecommunications service independent of their geographic location. The Decree also mandates government to regulate universal service obligations and includes provisions on the scope of services, and some detail on quality of service. No further regulatory details have yet been adopted. There is therefore no detailed and strong regulatory framework at this stage.

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

There is no ICT Policy at this moment and apart from basic liberalisation measures, no specific mix of complementary, innovative supply side strategies is identified in terms of the 2001 'Basic Telecommunication Law'. Although the need to ensure the "expansion and modernization of the national telecommunications system"[257] is recognised, the master "Plan for a National Telecommunications System"[258], which might have specified such interventions, appears not to be publicly available.

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

No demand-side strategies are identified in the 2001 'Basic Telecommunication Law', and there is no documentary evidence of other demand-side interventions, although a number of telecentres have been established and there was a SchoolNet which is now defunct.[259] No ICT Policy has been adopted at this stage.

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254 ITU (2010) 'SADC ICT Policy and Legal Framework: A Review and Update in the view of Convergence', Harmonization of ICT Policies in Sub-Sahara Africa project, International Telecommunication Union, Geneva.

255 ManyPossibilities (2010) 'African Undersea Cables (2011)', available online at http://manypossibilities.net/afican-undersea-cables.

256 Angola Telecoms Executive Summary, available at: www.budde.com.au/Research/Angola-Telecoms-Mobile-Broadband-and-Forecasts.html

257 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 1.1.

258 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 9.

259 Isaacs, S (2007) 'ICT in Education in Angola', Survey of ICT and Education in Africa: Angola Country Report, InfoDev, Washington DC

3.3.1.2 Botswana

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

The 1995 Telecommunications Policy refers to USO via "licence conditions [which may be] imposed on operators and service providers [to] rectify [access] imbalances"[260]. There is, however, no specific provision for this under the 1996 Botswana Telecommunications Act other than the general provision that give the regulator the right to impose "such conditions and restrictions, including geographical restrictions, as [it] considers necessary, which conditions shall be endorsed on such licence."[261]. Licences are not publicly available, and so it is impossible to see what USOs they contain.

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)*

Liberalisation is a cornerstone of the 1995 Telecommunications Policy which declares its "strong support for full competition in all aspects of provision of telecommunication networks and services"[262]. The market currently has 3 Public Telecommunications Operators (licensed for a range of communications services including fixed and mobile telephony), 43 Value Added Network Service licensees, 15 Private Network Operators[263].

Strong Regulatory Framework: *enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)*

The government is still in the process of liberalising and enhancing regulation of the communications industry in a bid to attract investment as well as encourage innovation and competition. Efforts are being made to reduce communications costs in Botswana, mainly through further liberalisation of the telecommunications industry. This should create more competition and ultimately result in lower tariffs for the consumer.[264]

Supply-side Innovation: *Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation*

No such mix of measures is set out in either the 1995 Telecommunications Policy or the 1996 Botswana Telecommunications Act. There is also considerable disparity in terms of urban and rural access to ICT services. Challenges include the relatively high cost of PCs, the lack of electricity in many rural locations, and high charges for Internet usage.[265] The forthcoming Universal Access and Service (USA) Policy may include such measures, but it is not yet publicly available at the time of writing.

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260 Botswana (1995) 'Telecommunications Policy for Botswana', Ministry of Works, Transport and Communications, Gaborone, December 1995, section 8.2.

261 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 17 (2) (a).

262 Botswana (1995) 'Telecommunications Policy for Botswana', Ministry of Works, Transport and Communications, Gaborone, December 1995, p 19.

263 BTA (2010) 'Annual Report Of Botswana Telecommunications Authority : 2010', Botswana Telecommunications Authority, Gaborone, p6.

264 InfoDev country report on ICT in Education in Botswana, available at : www.infodev.org/en/Publication.387.html

265 InfoDev country report on ICT in Education in Botswana, available at : www.infodev.org/en/Publication.387.html

Meanwhile, a number of initiatives were introduced which are aimed at increasing supply.[266] These included:

- National Telecommunications Network Upgrade, where the government committed USD 60 million to rehabilitate and fortify the national telecommunications network. An additional USD 60 million was being mobilised to provide high capacity international connectivity through undersea cables off the east and west coasts of Africa.
- Rural Telecommunications Initiative, which at the end of its first phase in 2004, brought modern telecommunications, including Internet access, for the first time to 147 villages. When fully implemented, the project will ensure that more than 50% of Batswana living in the remote areas of the country will be provided with basic telecommunications services.

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

No such mix of measures is set out in either the 1995 Telecommunications Policy or the 1996 Botswana Telecommunications Act. The forthcoming Universal Access and Service (USA) Policy may include such measures, but it is not yet publicly available at the time of writing.

There are, however, a number of Policy Initiatives which promote the development of the ICT sector. These initiatives will most likely develop demand for communications services. Vision 2016, for example, is a national manifesto of the Botswana government, and defines the strategies to meet the long-term economic goals for the country. ICT is also a major focus of the country's economic agenda, the National Development Plan 9. A government policy entitled the Revised National Policy on Education, released in 1994, highlighted the need for all learners to be taught computer skills at all levels of school, and recommended the introduction of computer science as a subject option in senior secondary schools and computer awareness for the three years of junior secondary school.

The Government of Botswana also recently introduced its national ICT policy, called Maitlamo.[267] The Policy aims not only to stimulate the supply of communications means but also to ensure the country has the skills to be an ICT leader. The latter is again expected to stimulate demand for communications services. Its stated key goals are for Botswana to become a sub-Saharan ICT hub, to create an enabling environment for the growth of an ICT industry in the country, and to provide Universal Access and Service to information and communication facilities in the country.

To this effect the following activities are highlighted for implementation:

- Connecting communities programme
- Government on-line
- ThutoNet (see below)
- e-Health Botswana
- ICT and economic diversification
- Connecting Botswana
- Connectivity laws and policies

Finally, the government also introduced the "Community Information at the Touch of a Button" project, where the Botswana Technology Centre is piloting a community user-information system to bridge the digital divide between rural and urban dwellers. The system comprises an on-line computer network linking three rural communities to Gaborone. The centres provide rural communities with access to

[266] InfoDev country report on ICT in Education in Botswana, available at: www.infodev.org/en/Publication.387.html
[267] InfoDev country report on ICT in Education in Botswana, available at: www.infodev.org/en/Publication.387.html

Internet-based information and communication services, as well as local information on health, education, and business. It will be expanded to include basic services such as downloadable application forms for everything from drivers' licences to bank loans. The centres will also provide small business services and offer basic computer awareness lessons. Following the pilot project, the programme will be rolled out to the rest of the country.[268]

3.3.1.3 Democratic Republic of Congo (DRC)

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

Operators' licences are to contain, among other things, the operator's service area and the level of the operator's contribution to research, education and standards-setting.[269] Although the law does not list criteria for imposing universal service obligations, the text creating the universal service fund is found in the section of the law addressing the temporary exclusivity of "the public operator" (presumably, the incumbent).[270]

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)*

The sector is governed by the Ministère des Postes, Téléphones et Télécommunications ("Ministry"), and the regulator, the Autorité de Régulation de la Poste et des Télécommunications du Congo. The Ministry, however, holds nearly all significant power in governing the industry, despite much verbiage to the contrary in the general telecommunications law passed in 2002. Aside from the strong oversight powers, and the average tariff policies, the rest of the legal and regulatory framework is either poorly conceived or silent on issues of significance to the sector. The telecommunications market in the DRC is characterised by the almost total lack of fixed-line infrastructure.

Mobile networks have taken over as the providers of basic telecom services. By 2001, some 16 private operators had been granted mobile telephony licences and the subscriber base was growing at triple digit rates per year. The mobile penetration rate in the DRC has increased significantly in recent years but remains one of the lowest in Sub-Saharan Africa at approximately 16% as at 31 December 2008. However, the proliferation of networks has also caused interference and compatibility problems, and there is limited available spectrum due to poor spectrum management. As a result, the mobile sector has consolidated and now has four major players: Vodacom Congo, Zain DRC, Millicom (Tigo) and Congo Chine Telecom in which OCPT holds 49%. At 31 December 2008, Vodacom DRC was the market leader in the DRC with an estimated market share of approximately 38%. Zain Congo has been operational in the DRC since 2008; and Tigo Congo, a subsidiary of Millicom International Cellular, launched services in the DRC in 2007.[271]

Development of the Internet market has been held back by the poorly developed national and international infrastructure. The mobile operators are beginning to play a significant role in the internet sector as well, following the launch of mobile data services. However, no 3G mobile systems have yet been launched apart from a CDMA-EV-DO system in Kinshasa, which means that services offering true broadband speed are currently only available through relatively small wireless networks using other technologies, mainly WiMAX. With support from China, OCPT is now finally rolling out a fibre optic

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268 InfoDev country report on ICT in Education in Botswana, available at: www.infodev.org/en/Publication.387.html

269 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo* (2002) at Art. 21(a), (g).

270 *Id.* at Art. 39.

271 Vodacom report, available at: www.vodacom.com/drc.php

national backbone that will ultimately also provide access to fibre optic submarine cables for low-cost, high-quality international bandwidth.[272]

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

Rural areas, where almost 70% of the population resides, are virtually devoid of telephone or Internet service. The national operator, OCPT theoretically has a monopoly on the sector under 1970 legislation, but it has been unable to provide a modern telecom network and unsuccessful in finding major investors for privatization. Recognizing the need for telecommunications infrastructure, the government is only loosely regulating the sector.[273] No detailed regulatory framework has yet been established.

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

ICT remains largely undeveloped in the Democratic Republic of Congo (DRC) and there is no National Policy for ICT development. However, largely through the work of non-governmental actors (most notably COMESA and NEPAD), and Law 012/2002, ICT applications are slowly emerging. In accordance with the *InfoDev* ICT in education survey on DRC, a defined national policy for ICT is still non-existent, but a number of initiatives are underway, including the development of a partnership between the OCPT (Office Congolais des Postes et Télécommunications) and Korea Telecom, which will see the development of an optical fibre system to increase the capacities of telecommunications for fixed telephone service providers and the Multi Sector ICT Dynamic which aims to enhance collaboration between government, civil society, media, and private sectors for an innovative approach and to define a multi-stakeholder alliance on ICT for development policy. It is also aimed at democratising access to ICTs in the DRC.

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

See above.

3.3.1.4 Lesotho

USOs: ***Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services***

USOs are not specifically provided for in terms of the 2000 Lesotho Communications Authority Act, but are specified in individual operator licences, and were recommended by the regulator as the primary plank of an initial UAS strategy[274]. For example, the licence of the fixed line incumbent imposes a series of "system expansion and rollout targets" as well as the requirement to provide services to "every person who reasonably requests [their] provision"[275]. The mobile licences, such as that issued to Vodacom, similarly require that "system expansion requirements as set out by the [regulator] in consultation with

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272 Congo Telecommunications Market Research, available at: www.totel.com.au/african-telecommunications-research.asp?cid=CD

273 Congo Telecommunications Market Research, available at: www.totel.com.au/african-telecommunications-research.asp?cid=CD

274 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf, 5.2.

275 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, Annex B & 3.1.

the licensee" be met, and that they "meet any other Universal Service / Access obligations as required by the [regulator] from time to time subject to reasonable compensation" from the USF"[276].

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)*

In 1999, the government of Lesotho adopted a Telecommunications Policy that ushered in liberalisation of the ICT sector and aims to "introduce and promote competition"[277]. Consequent thereto, in June 2000, the Parliament of the Kingdom of Lesotho passed the Lesotho Communications Authority Act 2000[278] which granted the Lesotho Telecommunications Authority with a mandate to regulate the communications sector in Lesotho, and promote competition. The regulator itself is animated by a vision of "full competition in the communications market"[279] as a means of promoting UAS. The current market structure in Lesotho is as follows: 1 fixed telephony operator, 2 mobile operators, 5 radio broadcasting licensees, 5 ISPs, 3 international gateway licensees[280].

Strong Regulatory Framework: *enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)*

The 1999 Policy recognized that there was a need for an enabling legal and regulatory framework, and provided that government will ensure that legal and regulatory instruments are in place to promote investment needed to develop and deliver ICTs throughout the country.

A first set of laws and regulations have been passed since 2000, including the Lesotho Telecommunications Act (2000, as amended), the Lesotho Communications Authority (Licensing Fees) Rules (2008), the Lesotho Telecommunications Authority Regulations (2001), the Lesotho Telecommunications Authority (Administrative, Procedural and Service Provision) Rules (2000), and the Lesotho Communications Authority (Universal Access Fund) Rules, 2009. Further details regarding The 2001 Lesotho Telecommunications Authority Regulations[281] in particular provide principles regarding key regulatory issues such as competition, interconnection, etc.

Supply-side Innovation: *Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation*

The 2005 National ICT Policy provides that the rationale for developing the ICT policy includes the stimulation of the development of national infrastructure needed to support the delivery of ICT services throughout the country and provide universal access to information and knowledge, and the

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276 LTA (2001) 'Licence Granted by the Lesotho Telecommunications Authority to Vodacom Lesotho (Pty) Ltd for the Operation of Mobile Systems and the Provision of Mobile Services on 2001-10-11', Lesotho Telecommunications Authority, Maseru, 1.1 & 28.2.

277 Lesotho (1999) 'The Lesotho Telecommunications Policy', Ministry of Communications, Kingdom of Lesotho, Maseru, February 1999, 3.1.1.

278 Lesotho Communications Authority Act 2000, available at: www.lca.org.ls/docs/LTA-ACT-2000.pdf

279 LTA (2007) 'Communications Sector Liberalisation Framework', Lesotho Telecommunications Authority, Maseru, December 2002, available online at www.lca.org.ls/docs/2007_02_07_lib_approved.pdf

280 LCA (2010) 'Annual Report Of Lesotho Communications Authority (LCA) 2010', Lesotho Communications Authority, Maseru, available online at www.crasa.org/download.php?doc=doc_pub_eng45.pdf

281 Lesotho Telecommunications Authority Regulations, 2002, available at: www.lca.org.ls/docs/LTA_Regulations_2001.pdf

development of a transparent and effective legal and regulatory framework that promotes investment in the ICT sector and embraces technological innovation.[282]

The objectives of the National ICT Policy include:

- *Promote the deployment of advanced communications networks that are universally accessible.*
- *Provide and sustain the diffusion of ICT infrastructure for access to ICT services and products.*
- *Encourage infrastructure sharing among network operators so as to optimise scarce resources.*
- *Create a favourable investment environment for the private sector in the development of ICT, infrastructures.*
- *Endorse competition in the ICT sector so as to increase customer choice, quality and affordability of services.*

The Policy also provides that with the goal of increasing equitable, affordable and cost-effective universal access to ICT products and services throughout the country, the Government through the Ministry of Communications, Science and Technology and in conjunction with the Department of Energy, the Ministry of Transport, the regulatory bodies and the private sector shall:

- *Promote international standards and best practices in the deployment of flexible and robust ICT infrastructure.*
- *Ensure that regulations for the sector allow industry freedom of choice in its selection of technologies needed to deliver ICT services and products.*
- *Create measures to ensure an environment that attracts both domestic and foreign investment needed to develop the requisite infrastructure to support the delivery and use of ICTs.*
- *Establish a Universal Service Fund to promote the expansion of ICT infrastructure in underserved areas.*
- *Form partnerships with ICT service providers to ensure that ICT services are not restricted due to geography, income level or disability.*

Strategies defined in the 2005 Policy include:

- *Adopt a technology neutral approach in selecting appropriate, scalable technology needed to build advanced, robust communications networks.*
- *Promote public-private partnerships to mobilise resources needed for infrastructure deployment.*
- *Encourage all public sector institutions to get connected to ICT infrastructure.*
- *Establish efficient and effective broadband connectivity between commercial centres in Lesotho and between Lesotho and the rest of the world.*
- *Encourage lease of backbone communications networks at affordable rates so as to increase the number of service providers and types of services throughout the country.*
- *Encourage the expansion of the national grid in order to support the deployment of ICT infrastructure.*

[282] Lesotho National ICT Policy, available at: www.lesotho.gov.ls/documents/Lesotho_ICT_Policy_Final.pdf

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

Government adopted a National ICT Policy in 2005[283] in which highlights ICTs as tools to enable the country to achieve its development goals as articulated in the Lesotho Vision 2020 policy document and the Poverty Reduction Strategy paper. The policy also provides a brief stakeholder analysis and the roles that are expected in realising the policy goals. It identifies 10 catalysts in the implementation of the policy, which include education and human resource development as well as health, agriculture and food security, tourism, gender, and youth. The policy's stated vision is "To create a knowledge-based society fully integrated in the global economy by 2020." This vision anticipates the successful development and deployment of ICTs by 2015 that will:

- *Respond to national needs and priorities*
- *Reduce inequalities between the sexes and decrease the digital divide between urban and rural areas and the haves and have-nots*
- *Improve governance and deepen democracy*
- *Develop the human capacity needed to drive and sustain an information economy*
- *Support economic activities at home and throughout the world*

Its mission is "To fully integrate information and communications technologies throughout all sectors of the economy in order to realise rapid, sustainable socioeconomic development."

3.3.1.5 Madagascar

USOs: ***Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services***

Article 4 of the 2006 Universal Access Decree provides that network operators and service providers shall be obliged to ensure universal access to their services within their geographical coverage range. Their Licence shall determine the area, timeframe as well as the universal access obligations in conformance with eth terms of the 2006 Decree.

Liberalisation: ***Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)***

Competition is gradually being introduced with licences granted to mobile operator MadaMobil in 2008, and licences for data transmission networks and wireless local loop being renewed in 2010 in favour of Data Telecom Services SA and Gulfsat Madagascar.

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

The sector is governed by the Ministère des Télécommunications, des Postes et de la Communications, and the current regulator, the Office Malagasy d'Etudes et de Régulation des Télécommunications ("OMERT"). The main telecommunications law was passed in 2005 seeking to further liberalisation efforts that began in Madagascar in 1996. Madagascar law has established public and non-discriminatory licensing procedures, and requires the regulator to act upon licence applications in a reasonable time frame. Licences are technology neutral. There are clear criteria for limiting the number of licensees. There

[283] Lesotho National ICT Policy, available at: www.lesotho.gov.ls/documents/Lesotho_ICT_Policy_Final.pdf

are clear procedures for the suspension, revocation and amending the term of licences. Madagascar's interconnection laws and regulations, however, fail to address several key aspects of a modern interconnection regime, such as roaming, local loop unbundling, and bitstream access/broadband resale. It is also unclear, in cases of dispute, whether the parties are automatically sent to arbitration before OMERT and the OMERT agreement applies on a temporary basis during the pendency of the arbitration, or whether OMERT has the discretion to simply apply the standard agreement. Moreover, the standard agreement is rather scant on technical details. The law and regulations themselves contain no statistical or objective quality of service indicators, and only have vague goals of achieving quality services. Leaving quality of service obligations to operators' licences may result in disparate standards among market players.

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

In accordance with Article 23 par. 4 of the Law (loi n°2005-023 of 17 October 2005,) which creates a Telecommunications Development Fund, the objective of the Fund is to contribute to the financing of the development of telecommunications and ICT as well as for the development of such services in unserved or underserved areas. The Law provides that the Fund may be used for the extension of ICT and telecommunications infrastructure, as well as to fund feasibility studies and the development of services necessary for the implementation of key development initiatives such as those included in the DSRP (Document de Stratégie pour la Réduction de la Pauvreté), MAP (Madagascar Action Plan), and PNTIC (Politique National TIC)[284].

Communities or groups of communities may file a request with the Ministry (but copying OMERT) for an extension of services to their area. These requests should include the community/communities' proposed financial contributions. OMERT is then required to amend its list of communities to be covered to make note of the requests filed, including what was requested, the proposed funding and the community funding proposed.[285] If a community is contributing to the subsidy, no payment is made until the community remits its portion.[286]

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

The Law provides that the Fund may be used for the extension of ICT and telecommunications infrastructure, as well as to fund feasibility studies and the development of services necessary for the implementation of key development initiatives such as those included in the DSRP (Document de Stratégie pour la Réduction de la Pauvreté), MAP (Madagascar Action Plan), and PNTIC (Politique National TIC)[287].

284 Decree 2006-616, Art. 7.
285 *Id.* at Art. 8 (2).
286 *Id.* at Arts. 8-15.
287 Decree 2006-616, Art. 7.

3.3.1.6 Malawi

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

The imposition of USOs on fixed and mobile operators through the licences issued by the regulator is seen as a key ongoing UAS intervention in the 2002 Rural Telecommunications Policy[288], but copies of existing licences are not available to verify the implementation of this.

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)*

The 1998 Communications Sector Policy committed Malawi to a progressive liberalisation of the telecomms sector, foreseeing the licensing of an additional mobile operator, but retaining exclusivity for the fixed line incumbent, and opening up the ISP sector. Further liberalisation commitments are made in later policy documents, which refer to creating an "investor friendly telecommunications environment including targeting the liberalisation of the ICT sector"[289]. The 1998 Communications Act gives effect to this by charging the regulator to allow "as far as is practicable, open entry into the provision of public telecommunication services"[290]. By the end of 2008 Malawi had 2 fixed line operators (Malawi Telecommunication Limited & Access Communications Limited), 3 mobile operators (Zain Malawi Limited, Telekom Networks Malawi Limited, Globally Advanced Integrated Networks), 4 international gateway licensees, 15 ISPs, 21 radio stations and 2 television stations[291].

Strong Regulatory Framework: *enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)*

Overall Malawi's regulatory framework is a comprehensive one. It provides for transparency in the decision making of MACRA, provides for the independence of MACRA, clearly defines the rights and obligations of licensees and users, and provides MACRA with enforcement powers but also ensures that interested parties have an opportunity to present their arguments in the matter. In addition, decisions by MACRA may be appealed to the High Court. The regulatory framework has some areas that may be improved upon, such as increasing transparency in the rulemaking process, empowering its competition laws, and providing further clarity regarding fees and applicable tariff regulation. Also, in some instances, the authority of MACRA may be curbed to allow market forces to increase competition, or to be balanced by a requirement of necessity.

Supply-side Innovation: *Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation*

There does not appear to be any mix of complementary and innovative supply side measures in place.

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288 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 8.

289 Malawi (2003) 'An Integrated ICT-led Socio-Economic Development Policy For Malawi, Republic of Malawi, Lilongwe , June 2003, p 31.

290 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, Section 15 (b).

291 MACRA (2009) 'Regulatory Report of Malawi Communications Regulatory Authority (MACRA)', Presented to the CRASA 12th AGM, Malawi Communications Regulatory Authority, Lilongwe.

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

There does not appear to be any mix of complementary and innovative demand side measures in place.

3.3.1.7 Mauritius

USOs: ***Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services***

The 2004 National Telecommunications Policy provides that the Universal Service Obligation (USO) is the obligation placed on operators and service providers to ensure that standard voice/fax services, payphones, Internet services, text message services, E-mail, and prescribed info-communications services are available to the whole population in Mauritius at affordable and reasonable prices. It further provides that the regulatory authority will be responsible for prescribing and developing specific indicators of info-communications access that reasonably meet the social, industrial and commercial needs of Mauritius and for identifying the appropriate targets to ensure that universal service and access is offered within a reasonable time frame and shall evaluate the progress periodically.

Section 7 of the Universal Service Regulations 2008 provide that the Authority may designate one or more universal service providers.

Liberalisation: ***Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)***

Mauritius Telecom (MT) is the incumbent provider of telecommunications services in Mauritius having been granted a monopoly under the 1999 Policy to provide all international telecommunications services and fixed voice within Mauritius until 31st December 2003. A duopoly was provided for until 1st January 2004 in provision mobile services between MT's affiliate and a private company that had launched back in 1989. MT's was partially privatised (40%) to France Telecom in November 2000 and its exclusivity legally terminated in December 2002 thereby opening the market to full competition in 2003. Government ownership in MT is 41% (1% for sale to an employee shareholding scheme) and the State Bank of Mauritius owns the remaining 19%.

One of the building blocks for the transition towards free and open competition in the post-liberalised multi-operator ICT sector was the introduction of a new licensing structure, which was defined in July 2003, and which supported the change from a vertically integrated monopolistic regime towards horizontal integration in a newly liberalised context. The 2004 Policy puts forward a licensing framework with four categories of licensable activities: network infrastructure provider, network services provider, network application service provider and private networks. Authorisation for these is either through class licensing or individual licensing depending on the level of regulatory control.

A simpler and more transparent licensing regime was introduced based on openness and non discrimination, this in order to encourage the entry of operators, while minimizing associated regulatory and business risks. Under the 2004 policy,292 Internet telephony service was permitted subject to terms and conditions stipulated by the regulatory authority. In addition, ISPs were allowed to set up international gateways again subject to specific licence conditions. The ensuring licensing regime is to provide full and open competition in a technology-neutral telecommunications sector so as to encourage operators to introduce new services so as to meet market demand. The regime was also an illustration of newly defined WTO rules.

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[292] National Telecommunications Policy, 2004, Ministry of Information Technology and Telecommunications http://telecomit.gov.mu

The Government of Mauritius recognised the role for targeted and effective regulation and liberalisation of the ICT sector. The ICT Act 2001 was proclaimed by Parliament in late 2001, repealing the 1998 Telecommunication Act, and establishing the Information and Communication Technologies Authority (ICTA) which started operations as regulator of the ICT sector in 2002.

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

The 2004 policy also lays down strategies for ensuring fair, effective and sustainable competition for the liberalised market that include:

- *issuance and review code of practice for good conduct of business of operators with a view to preventing such anti-competitive practices.*
- *Proper regulatory reforms to guard against risks of cross-subsidization, predatory pricing, anti-competitive use of information and discriminatory practices as well as to create sufficient separation and minimize the potential for cross-subsidization, collusion or other anti-competitive actions between the separated companies.*

An ICT Appeal Tribunal was set up by Government in accordance with ICT Act 2001.

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

The Government of Mauritius has actively promoted ICT since 1989 defining a strategy which involved creating instruments to support the liberalisation of its telecommunications sector and promoting supply of ICT infrastructure and services.

The government has taken a leading role in the development of the ICT sector by removing customs duties on all ICT hardware and software; providing, through a number of institutions, a wide range of fiscal incentives both to companies wanting to finance computerization projects or wanting to start job creating businesses in the field; and encouraging the setting up of tertiary education institutions providing courses in IT, Management and Business.

Government has also recognized the role of Public-Private Partnership (PPP) Schemes in promoting the supply of ICTs. The Presentation of 2002/2003 budget by the then Minister of Finance. Paragraph 100 stated that: "…Government will establish a framework for a Public-Private Partnership (PPP) Scheme. PPP will be used as a new form of financing infrastructure projects, including ICT and other major capital projects. A PPP Secretariat will be set up at the Ministry of Economic Development, Financial Services & Corporate Affairs to design a policy framework, including appropriate legislation. A unit will be established within the BOI to promote and market PPP projects." A PPP Unit was set up in July 2002 (initially known as the PPP Secretariat), and drafted the PPP legislation and produced the PPP Guidance Manual. The PPP Act was adopted in 2004.

The 2007-2011 National ICT Policy also provided that Government will provide for a National Broadband Policy that clearly signals the Government's intention of promoting broadband as an instrument of economic development, through a mix of interventions that would accelerate uptake of broadband in Mauritius among businesses and citizen communities in an equitable, transparent and customer-centric way.[293]

[293] National ICT Policy 2007-2011, available at: www.gov.mu/portal/goc/telecomit/file/ICT%20Policy%202007-2011.pdf

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

The government of Mauritius has repeatedly stated that ICT is to be one of the cornerstones of the new Mauritian economy, and has actively adopted measures aimed at creating an ICT literate workforce, improving the capacity of public institutions to harness ICTs, and positioning Mauritius to be a key player in ICTs. A cyber-city has also been established. There is a major emphasis on BPO with a special government secretariat established to look after this aspect of the ICT sector. Large e-government projects like government online, an e-government intranet and electronic service delivery are promoted. And there is a strong emphasis on training and education to sensitize the population and also to try to meet the projected shortfall in ICT professionals.

The 2007-2011 National ICT Policy provides that in order to realise the vision of Government, the majority of the population must have adequate access to ICTs and comfortably harness the use and application of ICTs in everyday life. Government therefore seeks to define a set of policies on ICT for Social Development to ensure that all segments of the population have access to ICTs, are IT literate, are able to develop local content and have access to local information online[294].

Within the context of the 2007-2011 National ICT Policy, government also defined measures to encourage universal access and stimulate demand, including:

> *a) Action will be taken to increase ICT integration in society, by providing access to ICTs to all communities including those who are isolated geographically or economically. In order to increase household PC penetration, financing options will be provided for low-income individuals to purchase a computer with broadband Internet access. The primary school PC penetration will also be increased;*
> *b) Government will provide access to ICTs through the enhancement of existing Public Internet Access Points (PIAPs) in post offices and the setting up of PIAPs with multipurpose functions at new locations to be accessed by the whole community. Different modes of financing and operating the PIAPs will be analysed so that they are sustainable in the long-term;*
> *c) The development of online local content will be encouraged by initiating the Community Empowerment Programme which will comprise the development of a Community Web Portal to empower the community in building an information society. Awareness will be spread on the usefulness of ICT as a tool for sharing information and providing services for a better society;*
> *d) The use of ICT for information and services will be promoted as a means for socio-economic development and empowerment. ICT will be used to increase the employability of the unemployed, under-employed and vulnerable sections of society. Entrepreneurship in the ICT sector will beencouraged;*
> *e) In order to reduce the digital divide, the youth will be encouraged to set up computer clubs with the aim to encourage their interest in IT-related fields and to provide online fora so that they can express their needs; and*
> *f) The Universal ICT Education Programme will be enhanced through industry recognition of the IC3 certificate and promotion of the IC3 as an industry pre-requisite for employment. Higher IT courses will be provided to trainees who complete the IC3 certification.*

The 2007-2011 National ICT Policy also provides that policy measures to be implemented include the following:

> *a) Special programmes will be developed for the training of young people to increase their employability in the ICT sector, especially in the BPO and Call Centre segments, and to meet the demand of the industry in terms of qualified manpower;*

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[294] National ICT Policy 2007-2011, available at: www.gov.mu/portal/goc/telecomit/file/ICT%20Policy%202007-2011.pdf

b) Government and industry will jointly sponsor applied research projects in ICT in local universities;
c) Government is strongly committed to attract top names in the ICT Industry to set up a Regional Centre of Excellence, which would assume leadership for focused education on high-end technology areas and research activities and thus serve the region as a fountain of expertise in such areas;
d) Government will enhance entrepreneurship development at tertiary level and capacity building for SMEs as well as promote the expertise of Mauritius in Business Incubation at the regional level; and
e) The ICT Incubator Scheme will be reviewed and consolidated to create a more conducive environment for the promotion of a local entrepreneurial culture[295].

3.3.1.8 Mozambique

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

Article 39 of the law provides that licences may include universal service obligations, and that such obligations must be proportional, transparent and non-discriminatory.

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)*

Mozambique has been liberalising its market since the 1990s.

Strong Regulatory Framework: *enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)*

Mozambique has been liberalising its market since the 1990s. Mozambique is presently updating its legal and regulatory framework to address liberalisations and convergence.

Supply-side Innovation: *Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation*

According to the World Economic Forum Global Information Technology Report, Mozambique ranks 101st out of 115 economies using the Networked Readiness Index which measures the degree of preparation of a nation or community to participate in and benefit from ICT developments.[296] Most of Mozambique's infrastructure is concentrated in the capital city Maputo.

The Government of Mozambique's primary policy goal is to reduce absolute poverty within 10 years. It adopted an Action Plan for the Reduction of Absolute Poverty (PARPA) for 2001-2005. A second Poverty Reduction Strategy Paper (PARPA II) for 2006-2009 has a special focus on ICTs within various dimensions of its strategy to reduce poverty.[297]

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295 National ICT Policy 2007-2011, pg. 16, available at www.gov.mu/portal/goc/telecomit/file/ICT%20Policy%202007-2011.pdf

296 Global Information Technology Report. 2003., available at: www2.weforum.org/site/homepublic.nsf/Content/Global+Competitiveness+Programme/Global+Information+Technology+Report.html

297 "A Country ICT Survey of Mozambique." 2006. Greenberg ICT Services, SIDA. Stockholm, Sweden.

In 1998, the government established a dedicated National ICT Policy Commission that facilitated the adoption of a national ICT policy in 2000 as an extension of its PARPA strategy. The key objectives of the national ICT policy include:

- *Considering ICTs as a contribution to the fight against poverty*
- *Expanding citizens' access to global knowledge*
- *Raising the efficiency and effectiveness of state institutions*
- *Improving governance and administration*
- *Transforming Mozambique into a producer and not just a consumer of ICTs*
- *Linking Mozambique into the global information society*

Education, human resource development, health, universal access, national ICT infrastructure, and governance are the ICT policy priority areas. Since 1998 the National ICT Policy Commission has established an implementation strategy that was adopted in 2002. A technical implementation unit (UTICT)[298] was established within the ICT Policy Commission to oversee the implementation of strategic projects.[299]

The Law also provides that INCM shall define concrete projects to promote universal access and that such projects may be proposed by third parties.[300]

Demand-side Innovation: *Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services*

Mozambique has an e-government strategy,[301] aimed at promoting the use of ICTs in government.

3.3.1.9 Namibia

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

The 2009 Communications Act allows the regulator to "prescribe [a] minimum set of services that are made available by licensees" using a variety of methodologies, and to impose an "order" on any licensee to provide such services in a particular area, whether subsidised or not[302].

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)*

The 2009 overarching ICT policy commits the country to "reform the ICT sector, and [to] embark on an accelerated – yet managed – liberalisation journey"[303]. Similarly the 2009 Communications Act commits to the "opening of the telecommunication sector in Namibia to competition"[304]. Currently the market

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298 Web-site available at: www.utict.gov.mz

299 Survey of ICT in Education: Mozambique Country Report, available at: www.infodev.org

300 Law No. 8/2004, Article 40.

301 Available at: www.utict.gov.mz/documentos/estrategia_gov_electronico.pdf/view

302 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 57.

303 Namibia (2009) 'Overarching Information Communications Technology (ICT) and Broadcasting Policy for the Republic of Namibia: 2008', Ministry of ICT, Windhoek, Final draft, Version 9.0, 18 September 2008, p 10.

304 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 2 (a).

structure is as follows: 1 fixed line operator (Telecom Namibia), 2 mobile operators (MTC, Leo), 3 international gateway licences (Telecom Namibia, Leo, MTC) and full competition in the ISP segment[305].

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

The 2009 Namibia Communications Act is a comprehensive Act setting out key regulatory principles, including on competition issues, access and interconnection, unbundling, infrastructure sharing, etc.

Recent regulatory interventions to reduce mobile termination rates, and thus end-user prices, are reported to have stimulated market growth, having "led to lower prices, more subscribers and even better performance of the incumbent mobile operator"[306].

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

The 2009 overarching ICT policy sees the provision of ICT infrastructure as a "means to move Namibia towards the information society and knowledge-based economy" with the vision of "Namibia as a first class regional ICT hub"[307]. The 2009 Act defines as one of its objectives the need to "encourage private investment in the telecommunications sector".[308]There is, however, no evidence of a specific set of concrete supply-side innovative strategies in place.

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

The Namibian Government developed Vision 2030 as its national plan to "improve the quality of life of the people of Namibia to the level of their counterparts in the developed world by 2030." Within this context, and consistent with the objectives of Vision 2030, the Namibian Ministry of Education adopted an ICT policy for education in 2003. No further initiatives are available.

3.3.1.10 Seychelles

USOs: ***Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services***

The 1999 Broadcasting and Telecommunications Bill only gives a general definition of Universal Service stating that "universal service" means such telecommunication service as may be determined by the Minister as a service that needs to be provided by a licensee to an area or community not served, or not adequately served, by such a service. The law also

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305 Sherbourne, R & Stork, C (2010) 'Namibian Telecommunication Sector Performance Review', Research ICT Africa, Cape Town, p 6.

306 Sherbourne, R & Stork, C (2010) 'Namibian Telecommunication Sector Performance Review', Research ICT Africa, Cape Town

307 Namibia (2009) 'Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009', Ministry of ICT, Windhoek, 18 February 2009, pp 21 & 13, available online at http://209.88.21.36/opencms/export/sites/default/grnnet/MIB/Legislation/policies/NMICT_Overarching_Policy_incl_Postal_v15.pdf.

308 Namibia Communications Act, 2009, Section 2 (i), available at: www.ncc.org.na/admin/data/Publications/Communications-Act-8-of-2009.pdf

Liberalisation: ***Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)***

Seychelles has privatised the incumbent and introduced limited competition.

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

The 1999 Broadcasting and Telecommunications Bill summarily deals with regulatory issues such as licensing, interconnection and universal service. However, no detailed secondary legislation has been adopted to date.

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

The Seychelles government has a national strategy on ICTs that is co-ordinated and implemented by the Ministry of Information Technology and Communication. Section 3.1 of the ICT Policy provides that government shall promote and encourage the existence of a countrywide reliable and efficient ICT infrastructure which shall have sufficient capacity and network speeds, provide improved connectivity, be cost-effective and adaptive to the needs of the country. Within this context, government privatised the incumbent and introduced limited competition.

The Policy also provides that in order to increase ICT, government shall promote widespread accessibility to ICT services and introduce initiatives through which ownership by the public of ICT equipment (e.g. computers) can be increased.

The Policy also provides that in order to increase ICT, government shall provide for legal and regulatory reform, including:

1. *Review the existing legislations, taking cognisance of international best practices, and foster a clear and supportive legal framework that promotes and supports the long term development of the ICT sector.*
2. *Promote confidence for engagement with the information society through enactment of legislations addressing issues including, inter alia, computer and computer related crime, consumer protection, intellectual property rights, dispute resolution and security.*
3. *Establish a comprehensive legal framework for e-business and innovation.*
4. *Develop appropriate regulations that would ensure fair and equitable competition amongst service providers and promote rapid growth of new services and applications.*
5. *Promote appropriate training for the legal community on regulatory issues, including law enforcement agencies.*
6. *Monitor trends in ICT legislation internationally and adopt legislations that will establish a framework for creation of an Information Society and Economy.*

The ICT Policy also provides for industry development and that government shall:

1. *Encourage local ICT development for the local and export market by supporting and providing incentives for innovations and experimentation in software, hardware and ICT systems development.*

2. *Encourage the growth of software development by increasing awareness among the public and private sector of the opportunities offered by different forms of software, including open-source, proprietary and free software.*
3. *Promote the professional recognition of technical professionals in the ICT sector.*
4. *Encourage Research and Development in the ICT sector.*
5. *Promote participation of local ICT organisations in international ICT events for acquaintance with the international market, trends and establishment of business contacts.*
6. *Promote joint ventures between local and foreign entrepreneurs in the ICT sector.*
7. *Create a culture of innovation, entrepreneurship and technological sophistication in order to support the extensive and innovative applications of ICT.*
8. *Promote ICT as a catalyst for business modernisation, principally for the tourism, fisheries, offshore financial services industries, and to support small and medium enterprises.*

Demand-side Innovation: *Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services*

The ICT policy provides that government shall promote the demand for ICT services, amongst others by:

- *developing the teaching of ICT at all levels of the formal education system.*
- *promoting the use of ICT in the informal education sector.*
- *encouraging activities relating to lifelong learning through the use of ICT.*
- *encouraging the use of ICT by all educational, scientific and research institutions, libraries, archives, museums, and community centres .encouraging the use of ICT for the delivery of distance education.*
- *encouraging and supporting the training sector to adhere/adopt to internationally acceptable standards of examination and certification of ICT training programmes.*
- *promoting the development of national certification and accreditation systems in the ICT sector.*
- *establishing appropriate schemes of service for different cadres of ICT personnel in the government.*
- *creating an enabling environment for public and private sector participation in promoting ICT awareness programmes.*
- *encouraging gender mainstreaming – in ICT programmes and development.*
- *promoting and supporting the development of appropriately qualified ICT personnel, who will meet the needs of the public and private sector.*
- *developing programmes to attract and retain skilled ICT professionals in the economy.*
- *ensuring that opportunities exist which will enable all learners to acquire ICT skills and be able to use them confidently and creatively to access employment or further training.*

3.3.1.11 South Africa

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

The 2006 Electronic Communications Act provides for the inclusion of "any universal access and universal service obligations"[309] within the terms and conditions for operator licences. As these vary from one licensee to another, they are specified at individual licensee level.

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, LLU, international gateways and undersea cables, and wholesale fibre through the definition of a strong regulatory framework)*

The 2006 Electronic Communications Act provides for considerable liberalisation of the sector. Following a High Court ruling over 400 electronic communications network services and electronic communications services licences were issued, effectively fully liberalising the market.[310] Major telephony operators in South Africa include: Vodacom, MTN, Cell C, Telkom, NeoTel, with several hundred ISPs & VANS licensees. Three undersea cables (SAT-2, SAT-3/WASC/SAFE & Seacom) service the country. There are also a number of wholesale fibre providers. Number portability and carrier pre-select regulations are in place, with LLU in progress.

Strong Regulatory Framework: *enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)*

Regulatory reform is well entrenched in South Africa, with the current regulator enjoying considerable independence and overseeing telecomms, broadcasting and postal sectors.[311]. The 2006 Electronic Communications Act contains a number of provisions that strengthen the supply side of the market, including: the far more open and effectively fully liberalised licensing regime referred to above; strong provisions covering rights of way, interconnection, facilities leasing and numbering.

Supply-side Innovation: *Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation*

Some innovative supply-side interventions , such as the granting of a number of under-serviced area licences to SMMEs to provide telephony services in areas of low teledensity, were, unfortunately not successful.[312] Some of the projects listed by Isaacs also serve to strengthen the supply side of ICTS, such as: the establishment of a Presidential National Commission on the Information Society and Development and a Presidential International Advisory Council on the Information Society and Development; the

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309 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 8 (2) (g).

310 Jones, C & Kayle, A (2009) 'VANS flock for licences', ITWeb, Johannesburg, 16 January 2009, available online at www.itweb.co.za/sections/quickprint/print.asp?StoryID=192858 & ICASA (2009) 'General Notice on Converted Licences in terms of Section 93 of the Electronic Communications Act (No 36 of 2005)', Notice No 28 of 2009, Government Gazette, Vol 523, No 31803, Independent Communications Authority of South Africa, Johannesburg, 16 January 2009

311 RSA (2000) Independent Communications Authority of South Africa Act No 13 of 2000 (as amended, 2006), Republic of South Africa, Pretoria, 2006

312 Lewis, C (2010) 'Achieving Universal Service in South Africa: What Next for Regulation?', paper presented to the International Telecommunications Society Conference: Telecommunications: Ubiquity and equity in a broadband environment, Wellington, New Zealand, August 2010, p 12 ff.

signing of a Microsoft Schools Agreement to provide software for schools; educational materials developed by Mindset and the Open Learning Systems Education Trust and via the Thutong Portal. [313]

Various provincial governments and municipalities in South Africa have invested significantly in infrastructure development. For example, the Gauteng provincial government participates in a R50 billion (USD 7 billion) plan for infrastructure development in Gauteng. The plans include roads and rail development as well as local government service delivery improvement. The project targets underdeveloped zones with second-economy characteristics for expansion and provision of ICT infrastructure.

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

Although the law makes no specific provision for demand-side strategies, there are a number of projects in place which have the effect of driving uptake of ICT services. Isaacs lists a number of ICT initiatives, which together have the effect of stimulating demand for ICT services. These include: a number of ICT in schools networks, including Education Network, E-Schools' Network, Gauteng Online, Coza Cares Schools Project, NEPAD eSchools Initiative and TuxLabs; several projects to upskill teachers, including Khanya Project, SchoolNet South Africa's Educator Development Network, Microsoft Partners in Learning and Intel Teach; the implementation of an e-rate for schools and educational institutions.[314]

3.3.1.12 Swaziland

USOs: ***Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services***

The [DRAFT?] Electronic Communications Bill 2009 does not contain any specific provisions relating to the imposition of USO obligations on operators. Section 33 does, however, provide that the Commission shall determine the most efficient and appropriate approach for ensuring the implementation of universal service.

Liberalisation: ***Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, international gateways and undersea cables, and wholesale fibre)***

There are currently 7 major ISPs with an estimated customer base of about 20 000. There are no licence obligations for ISPs except for an operation permit (Trading licence), and currently no requirement for contributions to a Universal Services Fund. Competition has also been introduced in the mobile market.

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

The [draft] Electronic Communications Act 2009 and [draft] Communications Commission Act, 2010 are comprehensive documents. However, no detailed regulations have yet been elaborated.

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313 Isaacs, S (2007) 'ICT in Education in South Africa', in Farrell, G, Isaacs, S & Trucano, M (eds) (2007) Survey of ICT and Education in Africa (Volume 2): 53 Country Reports, InfoDev / World Bank, Washington, DC

314 Isaacs, S (2007) 'ICT in Education in South Africa', in Farrell, G, Isaacs, S & Trucano, M (eds) (2007) Survey of ICT and Education in Africa (Volume 2): 53 Country Reports, InfoDev / World Bank, Washington, DC

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

The [draft] 2009 Electronic Communications Bill (Section 33) provides that the Commission shall determine the most efficient and appropriate approach for ensuring the implementation of universal service.

The [draft] NICI Plan (Section 2.2.6) recognizes that to facilitate the implementation of the African Information Society Initiative (AISI), there will be a need to ensure the deployment of adequate communication infrastructure through the liberalisation of services supported by enabling legislation and incentives that lead to price reduction, advanced services and network expansion to meet universal access objectives. Section 1.4 of the NICI Policy provides for the development of the necessary legal, institutional and regulatory enabling environment and structures for supporting the development, deployment and exploitation of ICT within the economy and society; the development of the physical infrastructure of Swaziland using innovative methods including co-location with other infrastructure providers e.g. electricity, roads, railways etc; and the need to build broadband capacity in the information and communications infrastructure and introduce new services to improve universal access and service quality.

The [draft] NICI Plan also provides for infrastructure development throughout the country and defines the policy objectives as being to accelerate sector reforms to separate functions – policy, regulation and operations; to review the exclusivity timeframes in basic services with a view to accelerating the liberalisation of all services; to facilitate the creation of a universal access fund to which all operators will contribute; to facilitate the building of a state of the art ICT infrastructure premised on broadband; to encourage and support coordinated delivery of communications, roads, electricity, pipeline, housing infrastructure etc to reduce costs; to encourage and support local assemble of some of the basic ICT equipment; to facilitate the importation of ICT equipment and services through duty reduction, tax breaks, incentives etc; and to facilitate the conclusion of a MoU between the Competition and National Regulatory Authorities (anti-competitive practices in a liberalised sector).

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

The [draft] law does not include any such provisions.

The [draft] NICI Plan however provides for infrastructure development throughout the creation of demand and defines the policy objectives as including the provision of connectivity to Tinkundla, schools, health institutions, community centres etc to ensure efficient and cost effective delivery services; to encourage Internet Service Providers to ensure that delivered content protects the violation of women's rights against on-line sexual exploitation which is also culturally inappropriate for society e.g. the youth; to fast track the implementation of the recommendations of the UNDP e-government study.

3.3.1.13 United Republic of Tanzania

USOs: ***Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services***

The 2006 Universal Communications Service Access Act provides for the imposition of USOs upon designated "universal service provider[s]" to roll out networks and provide services in "specified universal service area[s]" or nation-wide".[315].

[315] Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Sections 15, 16 & 14.

Liberalisation: ***Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, LLU, international gateways and undersea cables, and wholesale fibre) through the definition of a strong regulatory framework***

Tanzania has put in place a number of elements of telecommunications reform, establishing a sector regulator, amongst whose mandated objectives was to "promote competition in providing for telecommunication and postal services"[316] and whose authority includes the "power of licensing and regulating telecommunication systems and services". In 2005 Tanzania adopted a converged and open licensing framework,[317]. As at 31 July 2009 the regulator was reporting that it had issued the following categories of converged licences: 13 network facilities, 13 network services, 61 applications services, 45 radio content services, and 27 TV content services[318]. Major providers of telephony services include: Vodacom, Airtel, Tigo, ZanTel and TTCL. Mobile number portability has been in place since 2008, with some work having commenced on LLU.[319].

Strong Regulatory Framework: ***enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)***

Tanzania's regulatory reform process has significantly strengthened the supply side of the market. For example, the 1993 Communications Act contains provisions that allow for interconnection and access provisions to be included in licences, and to regulate tariffs . Much of the funding undertaken by the USF is intended to increase the supply of networks and services. The converged licensing regime has also helped to increase the supply of ICT networks and services, with Materu-Behitsa and Diyamett reporting the number of "Voice Mobile Operators" having risen from 5 to 7, with subscribers climbing from 1,3 million to 17,5 million, between 2003 and 2009, and the number of ISP / Data Operators having risen from 22 to 62 over the same period.[320]. In addition, since 2000, a series of regulations were adopted dealing with key regulatory issues such as licensing, universal service, interconnection, In 2010, a new Postal and Electronic Communications Act[321] was adopted, which deals with key regulatory issues such as licensing, access and interconnection, and competition issues. According to the Act, existing regulations (in this case the universal service regulations) will remain in force unless specifically repealed.

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

Tanzania's regulatory reform process has significantly strengthened the supply side of the market. For example, the 1993 Communications Act contains provisions that allow for interconnection and access provisions to be included in licences, and to regulate tariffs.[322] Much of the funding undertaken by the USF is intended to increase the supply of networks and services. The converged licensing regime has also helped to increase the supply of ICT networks and services, with Materu-Behitsa and Diyamett reporting the number of "Voice Mobile Operators" having risen from 5 to 7, with subscribers climbing from

316 Tanzania (1993) 'The Tanzania Communications Act, 1993', United Republic of Tanzania, Dar es Salaam, Section 5 (1) (k)

317 Tanzania (1993) 'The Tanzania Communications Act, 1993', United Republic of Tanzania, Dar es Salaam, Section 9 (1).

318 TCRA (2009) 'Licensing Information: Licensed Operators under the Converged Licensing Framework (CLF) as at 31st July 2009', Tanzania Communications Regulatory Authority, Dar es Salaam, 9 September 2005

319 Materu-Behitsa, M & Diyamett, B (2010) 'Tanzania ICT Sector Performance Review 2009/2010', Towards Evidence-based ICT Policy and Regulation, Volume Two , Policy Paper 11, Research ICT Africa, Cape Town, p 8

320 Materu-Behitsa, M & Diyamett, B (2010) 'Tanzania ICT Sector Performance Review 2009/2010', Towards Evidence-based ICT Policy and Regulation, Volume Two , Policy Paper 11, Research ICT Africa, Cape Town, p 3.

321 Available at: www.tcra.go.tz/policy/epoca.pdf

322 Tanzania (1993) 'The Tanzania Communications Act, 1993', United Republic of Tanzania, Dar es Salaam, Sections 11 (2) (a) & 5 (1) (m).

1,3 million to 17,5 million, between 2003 and 2009, and the number of ISP / Data Operators having risen from 22 to 62 over the same period .

Demand-side Innovation: *Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services*

No specific demand-side innovation strategies are provided for in terms of the legislation. Hare lists a number of ICT initiatives, which together have the effect of stimulating demand for ICT services. These include: the waKute Project, aimed at providing ICT implementation in teachers' colleges; an eSchool Forum proposal to introduce ICT in secondary schools; the Tanzania Computer Literacy for Secondary Schools Trust Fund, which undertakes computer procurement and refurbishment for schools; Barclays/Digital Links /T EA Computers for Schools Project. [323]

3.3.1.14 Zambia

USOs: *Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services*

There are no specific provisions in the 2009 ICT Act governing the imposition of USOs, although the regulator may, of course, include these within the terms and conditions of the licences it issues. The standard terms and conditions for both network and service licences contain a requirement for compliance with "the Universal Service/Access obligations as may be provided for under the ICT Act and any regulations issued thereunder or any Guidelines and rules issued by the Authority".[324]

Liberalisation: *Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, LLU, international gateways and undersea cables, and wholesale fibre) through the definition of a strong regulatory framework*

The 2006 ICT Policy commits to the attainment of "full liberalisation of all services in the ICT sector subject to regional and international protocols/agreements, best practices as well as market readiness".[325]. The licensing regime set out in the 2009 ICT Act provides for full liberalisation, with four major categories of licences: network and service licences, either individual or class licences.[326]

Strong Regulatory Framework: *enhancing universal access and promoting effective competition (Flexible Spectrum Policy, Effective Competition Law/principles (control of dominance), Access and Interconnection (including local loop unbundling, asymmetric interconnection), Co-location and Infrastructure Sharing)*

Zambia has undertaken a number of regulatory reform measures that have the effect of strengthening the supply side of the market. For example, obligations regarding "interconnection access and facility sharing" are explicitly provided for in relation to licences . Further, the law deals extensively with a number of aspects of economic regulation, including interconnection, collocation, tariff regulation

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323 Hare, H (2007) 'ICT in Education in Tanzania', in Farrell, G, Isaacs, S & Trucano, M (eds) (2007) Survey of ICT and Education in Africa (Volume 2): 53 Country Reports, InfoDev / World Bank, Washington, DC

324 See : ZICTA (nd) 'Network Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/network-licence.html and ZICTA (nd) 'Service Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/service-licence.html, clauses 9 and 7 respectively.

325 Zambia (2006) 'National Information and Communication Technology Policy', Ministry of Communications and Transport, Lusaka, April, 2006, section 6.5.2 (a).

326 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Section 10.

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

Some of the projects earmarked for USF funding by the regulator are supply-side innovations, such as the provision of rural Internet points of presence, and the provision of shared GSM base station infrastructure.[327]

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

No specific demand-side innovation strategies are provided for in terms of the 2009 ICT Act. Isaacs lists a number of ICT initiatives, which together have the effect of stimulating demand for ICT services. These include: Computers for Zambian Schools Trust, eBrain Forum, SchoolNet Zambia, OneWorld Africa, UNESCO Distance Learning Centre, the Ndola Resource Co-operative Society.[328] The regulator has also earmarked the establishment of Multi-purpose Community Telecentres.[329]

3.3.1.15 Zimbabwe

USOs: ***Imposition of obligations upon designated licensees to increase access through rolling out networks and providing services***

The 2000 Postal and Telecommunications Act imposes USOs upon any "cellular telecommunication licensee, postal licensee and telecommunication licensee [to] provide such postal services and community service telephones, as the case may be, in such under-serviced areas and community centres within and outside such areas as the Authority, with the approval of the Minister, shall specify in the licence issued to the licensee".[330] The 2001 Broadcasting Services Act also provides for public service obligations imposed on broadcasters, including ensuring "coverage of national events", provision of "fair, balanced, accurate" information, and a requirement for "subscription satellite broadcasting licensee [to] transmit an unencoded signal from a public broadcaster.[331]

Liberalisation: ***Introduction of competition with liberalisation of appropriate market segments (CPE, paging, ISPs, data communications, VANS, LLU, international gateways and undersea cables, and wholesale fibre through the definition of a strong regulatory framework***

Although the 2000 Postal and Telecommunications Act does not contain a specific commitment to liberalisation, it does charge the regulator to "promote effective competition" .[332] The Act provides for the following categories of licence: cellular telecommunication, postal, radio station, telecommunication (which includes fixed line telephony and ISPs), and private telecommunication. The current market structure includes: 1 fixed line operator, 3 mobile operators (Econet, NetOne, Telecel), 5 international

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327 ZICTA (nd) 'Internet Point of Presence (PoP)' & 'GSM Mobile Base Stations ', Zambia Information and Communication Technology Authority, Lusaka, available online at, www.caz.zm/index.php/universal-access/universal-access-projects/Internet-point-of-presence.html & www.caz.zm/index.php/universal-access/universal-access-projects/gsm-mobile-base-stations.html respectively

328 Isaacs, S (2007) 'Survey of ICT in Education in Zambia', in Farrell, G, Isaacs, S & Trucano, M (eds) (2007) Survey of ICT and Education in Africa (Volume 2): 53 Country Reports, InfoDev / World Bank, Washington, DC

329 ZICTA (nd) 'Multi-purpose Community Telecentres (MCT) Projects and Training', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/universal-access/universal-access-projects/multi-purpose-community-telecetres.html

330 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 94 (4).

331 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 39.

332 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 4 (1) (h).

gateways, 11 ISPs (10 class A which allows VoIP services, and 1 class B which combines public data and Internet – major ISPs include ZOL, Yo Africa and I-Way Africa).[333]

Supply-side Innovation: ***Mix of complementary and innovative supply-side strategies to extend ICT networks and increase funding for access interventions in order to meet UAS objectives and targets, including through community participation***

Zimbabwe has undertaken some regulatory reform measures that have the effect of strengthening the supply side of the market. Although the independence of the regulator is somewhat constrained, the 2000 Postal and Telecommunications Act does contain provisions covering interconnection and rights of way,

Demand-side Innovation: ***Mix of complementary and innovative demand-side strategies to stimulate demand for access to ICT networks and services***

No specific demand-side innovation strategies are provided for in terms of the 2000 Postal and Telecommunications Act. Isaacs lists a number of ICT initiatives, which together have the effect of stimulating demand for ICT services. These include: African Virtual University Teacher Education Project, College IT Enhancement Programme, Kubatana Trust of Zimbabwe, World Links Zimbabwe.[334]

3.4 International Case Studies

3.4.1 ECOWAS

Complementary strategies can be applied to ensure that objectives and targets are met through a mix of tools. 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 multi-pronged 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."*

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 incentivising 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.

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;*

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333 www.techzim.co.zw/2010/03/zimbabwe-telecoms-overview/

334 Isaacs, S (2007) 'Survey of ICT in Education in Zimbabwe', in Farrell, G, Isaacs, S & Trucano, M (eds) (2007) Survey of ICT and Education in Africa (Volume 2): 53 Country Reports, InfoDev / World Bank, Washington, DC

- *'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)."*

According to the ECOWAS Supplementary Act on Universal Access and Service, Member States should aim to establish innovative regulatory policies to promote universal access and service, including:

- *Promoting access to low-cost broadband interconnectivity from the local level to the international level, involving government authorities, companies and non-governmental organizations;*
- *Adopting regulatory frameworks that support applications such as e-education and e-government;*
- *Adopting policies aimed at increasing access to the Internet and broadband services, based on their own market structure, such that the policies reflect diversity in culture, language and social interests;*
- *Ensuring that national regulatory authorities work with stakeholders to expand broadband coverage and use through multi-stakeholder partnerships, in conjunction with government initiatives that promote financially sustainable programmes, particularly with a view to bridging the market gap that may exist in some countries;*
- *Adopting regulatory regimes that facilitate the use of all transport media, whether wire line, power line, cable, wireless or any other new technology;*
- *Ensuring that national regulatory authorities put forward initiatives for encouraging public access to broadband and Internet services in schools, libraries and other community centres; and*
- *Ensuring that national regulatory authorities implement harmonized spectrum allocations consistent with the ITU radio communication conference process and each country's national interest.*[335]

Pursuant to the ECOWAS Supplementary Act on the Legal Regime Applicable to Network Operators and Service Providers, individual licences may specify results to be achieved for the provision of universal access and service.[336]

3.4.2 EU

Letting the market work can go a long way towards meeting universal access and service needs. Since the 1990s, the EU has recognized though that some degree of government intervention may be required to enable and complement the market, including government measures to improve the regulatory and business environment, to lead demand development as a major user, and to provide public sector support to accelerate supply.

The Universal Service Directive is part of the "Telecoms Package" which, together with four other directives ("framework"," access and interconnection", "authorisation" and "private life and electronic communications"), aimed to redefine the existing regulatory framework for telecommunications and to make the electronic communications sector more competitive.

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335 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access and Service at Art. 5.

336 ECOWAS Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers (2007).

The Universal Service Directive requires that national regulatory authorities (NRAs) must be able to impose obligations on undertakings to ensure that public pay telephones or other access points to publicly available telephone services are provided to meet the needs of end-users, whether in terms of geographical coverage, the number of telephones or other access points, the accessibility of such telephones to disabled users or the quality of services.

The Member States may designate one or more undertakings to guarantee the provision of universal service. The Member States may also designate different undertakings to provide different elements of universal service or to cover different parts of the national territory.

Interesting to note is the direction which universal service has taken in Europe. The 2010 BEREC[337] Report on Universal Service,[338] for example, describes how universal service has changed in the BEREC countries. According to the report, Universal Service Obligations (USO) exist in the vast majority of BEREC countries, with only 4 countries not imposing USOs and 4 countries where USOs have not been imposed.

In accordance with the report, in some countries there are services which are not or no longer included in the USO, particularly the comprehensive Directory Enquiry Service, the Directory of Subscribers, the Public Pay Telephones.

Interesting to note too is that some (four) countries have extended the scope of the USO to e.g. Internet access for schools, public libraries and hospitals at an affordable price, distress and safety communications etc. This illustrates how aspirations have become much broader and include large elements of human social development and constructive applications, as well as the spread of technology and infrastructure.

According to the BEREC Report, extensions to the scope of the USO included:

- Belgium – Specific Internet access for schools, public libraries and hospitals at an affordable price
- Denmark – Distress and safety communications via public radio-based maritime distress and safety services covering Denmark and Greenland, ISDN-services and leased lines.
- France – A number of compulsory services have to be provided by the provider of the first component of universal services (telephone services), they are listed hereafter: – Access to the ISDN; – Leased lines; – Packet data switching (X25); – Advanced vocal telephony services
- Spain – The obligation of the operators of public networks of electronic communications to comply with the conditions of broadcasting determined channels and radio programmes services and television to the public, or of coverage and quality. The obligation to offer the service to prove properly the content of the message or of its remission or reception, different from the system entrusted to the Sociedad Estatal de Correos y Telégrafos, S.A

This trend was already illustrated in the Riga EU Ministerial Declaration on e-inclusion, which recognized the social consequences of lacking access to ICTs when ICTs have become engrained in all parts of the economy, public and personal life. It clearly recognized that ICT contributes to improving the quality of everyday life and social participation of Europeans, facilitating access to information, media, content and services, to enhanced and more flexible job opportunities, and to fight against discrimination, and therefore provided that improving ICT access for people with disabilities and elderly is particularly important.

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337 The Body of European Regulators for Electronic Communications (BEREC) was created by Regulation (EC) No 1211/2009 of the European Parliament and the Council of 25 November 2009. BEREC is made up of a Board composed of the heads of the 27 NRAs and is assisted by an Office. The Office is a Community Body managed by a Management Committee in which all NRAs and the Commission are represented.

338 BEREC Report on Universal Service – reflections for the future, 2010.

The Riga Declaration stresses actions in the following areas:

- Using ICT to address the needs of older workers and elderly people;
- Reducing geographical digital divides;
- Enhancing e-accessibility and ICT usability for people of all abilities;
- Improving digital literacy and competences;
- Using ICT to promote cultural diversity; and
- Promoting inclusive e-government.

E-inclusion means both inclusive ICT and the use of ICT to achieve wider inclusion objectives. It focuses on participation of all individuals and communities in all aspects of the information society. E-inclusion policy, therefore, aims at reducing gaps in ICT usage and promoting the use of ICT to overcome exclusion, and improve economic performance, employment opportunities, quality of life, social participation and cohesion.

3.4.3 Uganda

Uganda adopted a clear national ICT policy, basic telecommunications law and related legislation at an early stage in the reform process, including a specific rural telecommunications policy, and a policy for the development of the telecommunication sector. Uganda also implemented a policy of private sector participation policy amongst others through innovative licensing approaches in promoting access to telecommunications in rural areas. In line with the private sector participation strategies, the first mobile operator, Celtel (U) Limited, which was also privately owned, was licensed in 1993 to supplement the services of the then state-owned monopoly operator, Uganda Posts and Telecommunications Corporation (UPTC).

The overarching objective of the 1996 Telecommunications Policy was to increase the level of telecommunications service penetration and availability at affordable prices. Specific objectives included increasing tele-density from 0.26 to 2 lines per 100 persons within a 5-year period and the introduction of additional services; increasing quality and meeting un-satisfied customer demand. The other objectives included increasing geographical coverage and ensuring access to telecommunications services in rural areas. The policy statement also defined an implementation strategy. The strategy entailed the privatization of the incumbent monopoly operator, Uganda Telecom Limited (UTL); the establishment of an enabling regulatory framework and the introduction of competition.[339]

The basic telecommunications law of Uganda, the Uganda Communications Act of 1997, is a comprehensive law that establishes a framework for licensing communications services and radio spectrum, and a set of principles to foster fair competition in the market. In addition, the Act provides for the creation of the UCC and sets forth its functions, powers, and structure. Apart from introducing a more flexible licensing regime, a strong regulatory framework has also been defined to promote competition and access to communications throughout the country. The 1997 Act provided for flexible regulatory environment, delegating to the UCC the authority to issue regulations on issues such as interconnection, licensing, radio spectrum use, and universal service among others. This flexibility has allowed the UCC to issue a series of regulations covering the most relevant aspects of telecommunications sector regulation.

In 2001 UCC issued a Rural Communications Development Policy. The thrust of the policy was to expand access to telecommunications infrastructure and services to rural communities. In November 2003, Uganda also adopted a National Information and Communications Technologies (ICT) Policy. The policy deals with information and electronic communications in a holistic manner.

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339 Moshiro, Simon, "Licensing in an Era of Convergence: The Case Study of Uganda" ITU, 2005.

In order to promote demand, the 2005 Universal Service Regulations provided that the Commission shall design schemes that ensure affordability based on the principles of transparency and non-discrimination through guidelines setting out the criteria that ensures affordability to all persons in Uganda.

The UCC also has the authority to designate operators as universal service providers and as such they would then have an obligation to provide universal services. This obligation may be imposed on a nation-wide basis or for a specified universal service area.

The UCC has determined further that all operators issued facilities-based licences will be designated as operators with a universal service obligation with respect to the services provided under that licence or other services that the Commission may determine at a later date. There is no distinction drawn between universal service obligations on dominant versus non-dominant operators, however, the UCC does note that operators with annual revenues above one hundred million shillings shall be designated a universal service operator.

The UCC imposes a policy statement and marketing plan obligation on universal service providers. The draft policy statement is viewed as a general statement issued by the universal service provider outlining its provision of services and equipment covered under the universal service obligation. The draft marketing plan has to include time frames for supply of services, as well as performance standards for fulfilment of universal service obligations and the processes for advising persons on the availability, offer and supply for equipment goods or services to fulfil the universal service obligation.

Prior to the issuance of the policy plan or the marketing plan, or submission of these two documents to the UCC for approval, the universal service provider must publish a preliminary version and solicit public comments on the draft plans within a specified time period. Consideration must be given to public comments received and editorial changes made to reflect the nature of the input received.

Before granting approval to the universal service providers' draft policy statement, the UCC will review it to ensure that the draft addresses supplying services and appropriate equipment to those individuals with disabilities or special needs, as well as the pricing of services offered.

In its review of the provider's marketing plan, the UCC will review the specificity of the plan with respect to how the provider will fulfil its universal service obligations, as well as establishing the terms and conditions for the supply of services or equipment for universal service.

The UCC will issue a formal written notice of its decision regarding the universal service providers draft policy statement and marketing plan. If the Commission does not grant approval to either of the plans it will provide written notice to the universal service provider as to the reasons for refusal, and likely would indicate a time period during which the provider can revise and resubmit new plans.

In addition, the 2005 Universal Service Regulations also specifically include regulatory techniques aimed at ensuring access to communication networks or services. Within this context, Section 6 of the regulations provide that access to communication networks or services for the provision of basic universal communication services shall be open, non-discriminatory and upon conditions based on objective criteria that are transparent and readily accessible to the general public. It further provides that operators shall maintain access and connection to the communications network, by reducing on the number of disconnection of end-users for non-payment so as to fulfil the universal service obligation. Access to and use of communication networks or services may be restricted or denied by the operators including complete refusal of access to the network or services, interruption, disconnection or limitation of service functions upon and on the basis of essential requirements including but not limited to:

(a) communications equipment or the use of communications equipment not approved by the Commission;
(b) security or integrity of the network;

(c) emergency situation involving serious threat to health, security or public order or risk of sabotage to networks or services;
(d) in the interest of national security; and
(e) enforcement of licence obligation.

Finally, the Regulations also provide that restrictions on access to and use of the communication network shall be proportionate and non-discriminatory and based on the objective criteria identified in advance.[340]

3.4.4 Morocco

Reform of the telecommunications sector in Morocco began with the enactment of a pro-competitive telecommunications sector law (Law 24-96) in 1997, the establishment of a separate regulatory authority (Agence Nationale de Réglementation des Télécommunications, – ANRT) and the introduction of a second mobile licence in 1999. Morocco privatized its incumbent operator, Maroc Telecom, in stages. In 2000, the Government sold 35% of the company to Vivendi Universal.

The Kingdom of Morocco thus established an efficient and transparent legislative framework which provided the basis for the development of telecommunications networks and services and was favourable to the development of the telecommunications market. Morocco's liberalisation encountered a period of stagnation beginning in 2000, as regulatory reform did not keep pace with the continuing changes in ICT technology and markets, particularly in terms of the Internet, data services, and international voice communications sectors. After this period of stagnation, the Moroccan government began in 2004 to move forward with an agenda to further liberalize and drive competition in the ICT sector. The plan included the award of additional licences for local, regional and international services on a technology-neutral basis, as well as at least two 3G mobile licences and new VSAT and GMPCS licences. In November 2004, the government published guidelines for telecommunications liberalisation and regulatory development for the 2004-2008 periods, including a strategy and timetable for opening all market segments to limited additional competition. A 2004 law updated the 1997 law and introduced several important changes, including:

- Broadening universal service to include value-added services and the Internet;
- Allowing owners of alternative telecommunications infrastructure (i.e., utilities or railways) to lease infrastructure to public operators;
- Obliging operating companies to share infrastructure with other operators on demand;
- Making the regulator, ANRT, responsible for the numbering system and introduces number portability;
- Reducing the maximum universal service contribution from 4 percent to 2 percent of net turnover tax and establishing a universal service fund; and
- Strengthening ANRT's role in monitoring and enforcing fair competition provisions and introduces sanctions for anticompetitive behaviour.

Implementing legislation introduced further changes; including a dispute resolution process for interconnection disputes; a new reference interconnection offer; revised fixed-mobile interconnection charges; new draft decrees addressing infrastructure sharing, local loop unbundling and leased lines; and carrier selection.

This regulatory update was accompanied in 2005 by the award of fixed licences to Méditel, already operating Morocco's second mobile network, and Maroc Connect. In July 2006, three 3G mobile licences were awarded. The successful bidders were: Maroc Telecom, Méditel and Maroc Connect. In terms of the

[340] Communications (Universal Service) Regulations, 2005, section 6.

privatization of the incumbent, 15 percent of the company was opened to public subscription in 2004 and a further 16% was sold to Vivendi in 2005, increasing Vivendi's stake in the company to 51 percent.

Mobile penetration rose from just over one percent in 1997 to more than 23 percent in 2003, primarily by attracting new customers but also capturing some customers from the incumbent fixed operator. In 2004, Morocco had the highest level of population coverage for mobile services in North Africa. Competition between the incumbent and the new entrant resulted in frequent and substantial tariff reductions. In contrast, in the international long distance markets, which has seen limited competition high prices continued. Fixed-line phone penetration levels also decreased after the liberalisation of the mobile market, and reached four main lines per hundred inhabitants by 2004.

Until 2005, Maroc Telecom was the only provider of fixed services. A second fixed licence was awarded to Méditel in 2005.

As a result of the enabling policy of the government to spread the use of ICT in all aspects of life in Morocco, a liberalisation and privatisation policy in the telecommunications sector led to the reduction of telecommunications cost and resulted in a rise in the number of cyber cafés and access to computers and Internet, even in small towns. Morocco thus achieved high levels of telephone penetration compared with other countries in the same income level thanks to a number of reasons, including:

- The government and regulator's relatively early pursuit of liberalisation in comparison to many of its other African peers, including introducing a second mobile operator in 1999;
- The roll-out obligation on MediTel to cover 40% of the Moroccan population and 2,000 km of main road arteries, needing to reach 75% of the population and 6,000 km of main road arteries after 5 years. Given that approximately 50% of Moroccans live in rural areas this meant that the second mobile operator had to cover 25% of the rural population;
- The independence and effectiveness of the regulator, ANRT, while undertaking the liberalisation process.
- The creation f a roadmap for the liberalisation of the fixed services in the telecommunications sector where the different stages of the process were clearly outlined.
- The Government's general guidelines note adopted in November 2004 specified the liberalisation plan for the period 2004-2008 and gave visibility to stakeholders on planned actions.

The Moroccan government also established a national ICT strategy entitled "e-Morocco".[341] Within this context, Moroccan authorities launched a number of action plans[342] under the umbrella of this strategy, including:

- The Programme of Generalized Access to Telecommunications ("PACT") programme, adopted in November 2006 by the Board of Management of Universal Service of the regulator, the purpose of which is to achieve universal access to telecommunications throughout Morocco during the period of 2007-2011. At the programme's inception, the Agence Nationale de Réglementation des Télécommunications (ANRT) found that 9,200 localities were not served by telecommunications networks, meaning that approximately two million Moroccans did not have access to telecommunications services.
- The GENIE programme, which seeks to expand access to ICT in education, including equipping schools throughout the country with computer equipment, training teachers and developing educational content.

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341 "Telecommunication and IT Sector in Morocco: Assets & Prospects" (undated), available at www.apebi.org.ma/IMG/pdf/E-Morocco.pdf.

342 *Id.* at 6-8.

Finally, it is interesting to note that four years after its introduction by Maroc Telecom in 2003, over 40 percent of Morocco's 1.3 million fixed phone line users had subscribed to DSL. That year carriers also began rolling out 3G wireless, which now serves about 65 percent of the Moroccan broadband market.

All this is part of the 'Maroc Numeric 2013' initiative, which hopes to get one in three Moroccan households hooked up to broadband by 2013, along with 400 computer centres built in low-income towns and rural areas.

3.4.5 Bangladesh

Bangladesh is a good example of a country where telecommunication access to most of the rural areas is mainly being provided not by government mandate but through Grameenphone's[343] Village Phone Programme.[344]

The Telecommunication Act 2001 does not provide for the regulator, the Bangladesh Telecommunications Regulatory Commission (BTRC), to establish a universal service project or universal service fund. However, it does provide the regulator discretion to include a compulsory obligation in the operator's licence requiring them to provide the licensed services to rural and sparsely populated areas, although not exceeding ten percent of the licensee's capacity.[345] No universal service fund has been established and there is no specific funding mechanism for providing universal service.[346] Currently, fixed line operators and mobile operators have obligations to provide universal access and service, which is generally done by providing 5 percent of their network capacity to rural areas.[347] The result is that telecommunication access to most of the rural areas is mainly being provided not by government mandate but through Grameenphone's Village Phone Programme.

The National Telecommunications Policy of 1998 states that it is the Bangladesh government's goal to "facilitate universal telephone service throughout the country, and where there is demand, all those value added services such as cellular mobile telephone, paging, data services, access to Internet (including electronic mail), voice mail and video conferencing". Universal service is defined to include services to both urban and rural areas of Bangladesh. Services included in Bangladesh's definition of universal service include both fixed line private residential service and individual mobile cellular services. Under the National Telecommunications Policy, universal service obligations for basic telephone services are to be included in the licences of all network operators.

The BTRC, which began operation January 31, 2002, had the following mission:

- *Increase the teledensity to at least 10 telephones per 100 inhabitants by 2010;*
- *Establish a phone in every village by 2006;*
- *Promote ICT applications to support socio economic development;*
- *Create an enabling environment and customer choice for ICT services;*
- *Encourage joint Public-Private cooperation in ICT development; and*
- *Encourage ICT applications which stimulate poverty reduction.*

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343 Grameenphone is a joint venture enterprise between Norway's Telenor (62%) and Grameen Telecom Corporation (38%), a not-for-profit subsidiary of Grameen Bank, a micro-credit pioneer and "internationally reputed bank for the poor". See www.grameenphone.com/About Grameenphone/Shareholders.

344 Grameenphone was founded by three visionaries: (1) Iqbal Quadir, Muhammad Yunus, founder of the Grameen Bank, and Khalid Shams. *See* Grameen Telecom's Village Phone Programme in Rural Bangladesh: A Multi-Media Case Study, Final Report, March 17, 2000, available at www.telecommons.com/villagephone/contents.html.

345 Bangladesh Telecommunication Act of 2001, Chapter V, par. 37.

346 *Id*.

347 *Id*.

The Village Phone Programme, started in 1997, is the initiative of the Grameen Bank, an NGO with an extensive rural banking network and an expert in microfinance programmes that assists poor villagers in rural areas by providing loans to them under a micro-credit programme for rural income generating activities. To implement the Village Phone Programme, the Grameen Bank created an independent not-for-profit subsidiary called Grameen Telecom, which then established a for-profit company, Grameenphone, to fund the Village Programme in Bangladesh with the profits it earns as a nationwide cellular mobile telephone provider. Grameen Telecom administers the Village Phone Programme with the help of Grameen Bank, trains the operators, supplies them with handsets and handles all service-related issues.[348]

The Village Phone Programme is able to provide modern digital wireless service to rural areas through Grameenphone's GSM network in Bangladesh. The programme provides loans to Grameen Bank members, who are most often female, to purchase a mobile phone under the lease-financing programme of Grameen Bank. These villagers then become Village Phone operators and earn money by offering telephone service to other people in their village. Each Village Phone operator is responsible for providing telephone services (sending and receiving calls), collecting call charges according to prescribed rates, remitting payments to Grameen Bank, and ensuring proper maintenance of the telephone. The Village Phone operator's income results from the difference between charges paid by customers and the airtime charges billed to the operator by Grameen Telecom, as well as a flat charge for incoming calls. Grameen Telecom buys airtime in bulk at a discounted rate from Grameenphone, which enables Grameen Telecom to pass on savings to the village operators.[349]

The initial goal of the Village Phone Programme was to install 40,000 village phones by year end 2004. According to Grameenphone's 2006 Annual Report, there were over 280,000 village phone operators by year end 2006 and 300,000 operators as of May 2007.[350]

According to data from the International Telecommunication Union (ITU) ICT Eye Survey on Universal Service, the total telephone subscriber per 100 inhabitants in 2007 in Bangladesh was 22.41, of which 0.75 were fixed telephone line subscribers and 21.66 (or 96.7 percent of total telephone subscribers) were mobile cellular subscribers.[351] This low fixed line penetration rate is partly due to the fact that the state-owned Bangladesh Telegraph and Telephone Board (BTTB) had a monopoly in the telecommunications sector until 2004 and failed to increase its subscriber base because of capacity constraints, inadequate investments, and corruption within the state system.[352] The majority of villages across Bangladesh still do not have access to a landline[353] and where access has been fulfilled, it is provided by mobile phone networks.

Grameenphone obtained a national mobile operator licence in November 1996, and commenced operation in March 26, 1997. It is currently the largest telecommunications services provider in Bangladesh, with a subscriber base of 19.58 million (out of a total of 42.04 million mobile subscribers) as of May 2008.[354] In comparison, the number of PSTN phone subscribers in May 2008 was only 1.26 million. Since it began operations in 1997, Grameenphone has also built the largest cellular network in

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348 Grameenphone website/About Grameenphone/Shareholders/Grameen Telecom Overview, at www.grameenphone.com.

349 Grameen Telecom's Village Phone Program in Rural Bangladesh: A Multi-Media Case Study, Final Report (Mar. 17, 2000), available at www.telecommons.com/ villagephone/finalreport.pdf. See also Grameen Telecom information at www.grameen-info.org/grameen/gtelecom/index.html.

350 Grameen Foundation, Village Phone Direct Manual: Enabling Microfinance Institutions to bring Affordable Communications to the Poor (2007).

351 *Universal Service Profile, Bangladesh* (2004), accessible at www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx# under "Country Reports".

352 M . Iqbal Ahmed and Erin C. Lentz, Enhancing the Livelihoods of the Rural Poor: The Role of Information and Communication Technology (Feb. 2007) at pp.8-9.

353 *Id*. at p. 9.

354 Bangladesh Telecommunication Regulatory Commission website data, Mobile Phone Subscribers (May 2008).

Bangladesh, installing over 10,600 base stations in more than 6100 locations, bringing nearly 98 percent of the country's population under its network coverage area.[355]

Apart from Grameenphone, other private operators such as Peoples Telecommunication and Information Services (PeoplesTel) and Integrated Services Limited (ISL) were also given licences to provide fixed line PSTN services to rural areas in Bangladesh.[356]

The initiatives of private companies like Grameenphone and Grameen Telecom's Village Phone Programme in Bangladesh demonstrate the possibility of successfully extending Universal Access and Service to remote rural villages by means other than a universal service fund.

Furthermore, the Bangladesh Village Phone Programme is also an example of the emergence of mobile technology as the dominant and preferred method to providing universal service and access, particularly in developing countries where mobile penetration rates are higher than fixed line penetration rates.[357]

4 Universal Access and Service Obligations (Definition, Monitoring, Enforcement, Sanctions)

4.1 Background

4.1.1 Universal Service Obligations

The 2002 SADC UAS policy guidelines provide for the following in relation to USOs:

> *5.1 Universal service obligation are a tool for facilitating affordability and equitable access to telecommunications services;*
> *5.2 Universal service obligations are embedded in the licence of each operator and be overseen by the regulatory agency;*
> *5.3 Discounted tariffs for telecommunications services are essential for achieving affordability and universal access/service to those economically disadvantaged, which include:*
> *5.3.1 People with physical or other types of disabilities;*
> *5.3.2 Learning institutions in lower income areas, such as primary and secondary schools, libraries, institutes and others; and*
> *5.3.3 Health institutions in lower income areas, such as clinics and hospitals.*
> *5.4 Minimum quality of service standards should apply to all providers, such standards include:*
> *5.4.1 Prompt response to any complaints lodged by the customer;*
> *5.4.2 Restoration of service network within a reasonable period of time;*
> *5.4.3 Compensation to the customer for any period of time during which service was interrupted as a result of an operator's fault; and*
> *5.4.4 Availability of free emergency services.*

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355 Grameenphone website at www.grameenphone.com, "CEO Announces Q1 results, talks about new brand campaign", Press Release (April 2008).

356 PeoplesTel was previously Bangladesh Rural Telecom Authority (BRTA) and ISL is the successor of Sheba Telecom's rural telecommunication licence.

357 GSM Association Report, Universal Access: How Mobile can Bring Communications to All, at www.gsmworld.com/documents/universal_access_full_report.pdf

5.5 Customer satisfaction are an aim of universal access/service therefore:

5.5.1 Each operator will be required to establish a customer satisfaction organisational unit where customers will lodge service or tariff complaints; and

5.5.2 The regulatory authority should ensure that all operators meet customer satisfaction goals.[358].

5.3 will be dealt with in the next section. 5.4 and 5.5 will be dealt with under the sections below that focus on quality of service and consumer protection specifically.

Global telecommunications services before the decade of the 1980s were supplied mainly on a monopolistic basis. In most of the developed countries, the monopolistic operator was basically a state-owned enterprise, while a few countries opted for the system of issuing licences to private or state monopolies on a territorial or functional basis. In short, government controlled all resources and ensured that what was seen as a public service was offered to people. State owned monopoly operators in the different countries were required to provide what was generally seen as a public service. These operators were generally the only one on the country or area and were required to roll out and manage the network elements as well as to fulfil whatever social obligations were required. Universal service obligations (USOs) were not defined as such since these entities were often even government departments and the more social tasks were seen as part of government's public service obligations and therefore also the organization's general public service mandate. Costs for specific services were not separated in the company's accounts, which made identification of losses for such services difficult. In addition the whole system of providing service to less profitable areas was supported by specific tariff policies and cross-subsidization. This model worked particularly well for many years in the more developed economies, where long-distance and international tariffs, which had stayed high despite technological changes, were decreasing in cost as opposed to the initial phases of their exploitation In the more developed economies, this model enabled the development of the networks and of teledensity and the sectoral industrial development. Even within this context of decreasing tariffs, this income still basically subsidized local and regional telecommunications and even the establishment of rural telephony. Additional financial sources for sector development and for the provision of universal service, in particular, were obtained from the government budget which supported this well

In the less developed countries, the scenario of cross-subsidization worked less well and operators started having difficulties in providing new services and in keeping up with technological changes. Financial resources were obtained in some cases from multilateral lending or donor agencies or from bilateral government or other government-sponsored sources.

With liberalisation, incumbents claimed that competitors affected their market share, thus making the social responsibility of covering unprofitable areas or groups of society more burdensome. Some incumbents claimed that they would need to be compensated for the cost of providing such access – an "access deficit charge". Although the "access deficit charge" mechanism" quickly fizzled out, it was useful in identifying universal service obligations and in defining more clear accounting and cost-based tariffs.

Since the 1980s, technological advances, the perceived need to further lower tariffs to bring tariffs in line with costs, the desire to increase the range of services available to the consumers and the desire to expand businesses based on viable communications infrastructure were among the factors that started to undermine "traditional" thinking about the telecommunications sector and the funding of access to telecommunications services. In developed countries, the further decrease in tariffs undermined the system of cross-subsidization, and in developing economies, the income from cross-subsidization of activities alone became insufficient to guarantee a proper service, and donor agencies were more reluctant to foot the bill -- private local and foreign sources of funding became more and more the norm.

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[358] TRASA (2002) 'Policy Guidelines on Universal Access / Service for Telecommunications Services in SADC', Telecommunications Regulators Association of Southern Africa, Gaborone, p 6.

In the EU, for example, when voice telephony was liberalised in 1998 to complete the overall liberalisation of the telecommunications sector, it was agreed to maintain a safety net to ensure that a set of basic telecommunication services would always be available at a determined quality and an affordable price, even if the market would not provide it. This set of basic services was called 'universal service'. With the 1999 review of the regulatory framework, it was decided to maintain the universal service and to update it to include a minimum speed connection to the Internet. The basic principles of universal service are determined by Directive 2002/22/EC on Universal Service and Users' rights.

To assist with the monitoring of universal access and service (UAS) obligations, reporting obligations of the UAS service provider must be carefully considered in the licence. These requirements relate to the project implementation schedule, which is often related to a network being rolled out and becoming operational, and then to the quality of service requirements.

Included in the EU principles as defined in the 2002 Directive, for example, is the need for effective monitoring and overview. Thus, for example, the 2002 Directive provided that designated undertakings for universal service must publish adequate up-to date information concerning their performance in the provision of universal service, based on quality parameters appearing in Annex III of the US Directive. If quality of service parameters are developed for disabled end-users and consumers, NRAs may specify these additional quality of service standards for assessing the performance of undertakings in relation to services provided to disabled end-users and consumers.

As stated in the InfoDev module on universal service, it is also important that there is effective enforcement. UAS managers must be mandated to be able to:

- Conduct random and routine checks of field performance to verify operating statistics and fulfilment of contractual obligations; and
- Prepare consolidated monthly internal reports to summarise project progress, achievements, explanations and reasons for variance from norm, and recommended further action.

Any criteria included in the UAS licence or service contract, are used as a basis for the UAS manager to monitor progress and to enforce the minimum stipulated quality standards on operators and service providers providing UAS.

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. 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.

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 are countries where the market can achieve UAS, but there is a need for public oversight to confirm that it has been achieved, to improve regulation, and to continually review the concept of what is considered UAS.

One example of a review of such universal service obligations is the review of the Kiwi Share in New Zealand, the contractual agreement between the Crown and Telecom that enables the Government to meet its social objectives in telecommunications. The Kiwi Share was established when Telecom was privatised in 1990.

The 1990 Kiwi Share required Telecom to:

- Maintain a local free calling option for ordinary residential telephone service;

- Charge no more than the standard residential rental for ordinary residential telephone service; and
- Continue to make ordinary residential telephone service as widely available as at 1 November 1989.

The government recognized that the telecommunications environment changed since the original Kiwi Share obligations were implemented and therefore that they needed updating to ensure they remained relevant.

The updated Kiwi Share therefore:

- Clarifies that free local calls include standard calls to the Internet and fax calls;
- Brings basic Internet access to virtually all New Zealanders by upgrading Telecom's network to provide 9.6 kbps data capability to 99% and 14.4 kbps to 95% of existing lines over the next two years (Telecom to bear the capital cost of this upgrade) while maintaining existing kbps data capability if higher than 9.6 kbps or 14.4 kbps;
- Extends network coverage obligation to current levels; and
- Requires Telecom to meet detailed service quality measures and report to the Crown and the Telecommunications Commissioner. The service quality measures include Telecom's performance, including 111 performance and dial tone availability.

The updated Kiwi Share was deemed to be a Telecommunications Service Obligation (TSO) instrument in terms of the new Telecommunications Act. Clause 5 of the existing Kiwi Share will continue to be in Telecom's constitution but will not operate while the updated Kiwi Share is in place. A TSO reflects Government social policy objectives. Under the new Telecommunications Act, all telecommunications service providers are required to contribute to the costs of the TSO, and a cost calculation and a monitoring and enforcement regime is undertaken by the Telecommunications Commissioner.

4.2 Key Elements

KEY ELEMENTS TO ILLUSTRATE CLARITY OF UNIVERSAL ACCESS/SERVICE OBLIGATIONS (DEFINITION, MONITORING, ENFORCEMENT, SANCTIONS

- **Scope of USOs:** There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations
- **Review Process:** USO criteria and their implementation and impact are subject to a defined and regular process of review
- **Differentiation:** 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
- **Publication of USOs:** Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency
- **Monitoring:** Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator,
- **Publication of Progress:** Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency
- **Enforcement:** If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view

4.3 Assessment of National Texts

4.3.1 Summary Chart

Country / Region	Scope of USO	Review Process	Differentiation	Publication of USOs	Monitoring	Publication of Progress	Enforcement
Angola	✓	×	×	×	×	×	×
Botswana	×	×	×	×	×	×	×
Democratic Republic of Congo (DRC)	✓	×	×	×	✓/×	×	✓/×
Lesotho	✓	×	×	×	×	✓	×
Madagascar	✓	×	×	×	×	✓/×	×
Malawi	×	×	×	×	✓	×	✓
Mauritius	✓	✓	×	×	×	✓	✓
Mozambique	×	✓	×	×	×	✓	✓
Namibia	×	×	×	×	×	✓	×
Seychelles	×	×	×	×	×	×	×
South Africa	✓	×	×	×	×	×	✓
Swaziland	×	×	×	×	×	×	×
United Republic of Tanzania	×	×	×	✓	✓	✓	×
Zambia	✓	×	×	×	×	×	✓
Zimbabwe	×	×	×	✓	×	×	✓

4.3.1.1 Angola

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

Under the 2001 'Basic Telecommunication Law' USOs are to be imposed specifically on "public utility carriers" which are not defined in the law, but which by implication include the fixed line "incumbent carrier"[359]. Criteria, applicability and specific USOs would presumably be more fully identified in the putative "General Plan for Universal Access" although "basic services"[360] (ie fixed line) are considered to be the core focus for USOs,

[359] Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.1.
[360] Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

There is no requirement for any review of USOs in the 2001 'Basic Telecommunication Law'. This might be provided for under the required "General Plan for Universal Access"[361] but there is no documentary evidence of the existence of this plan.

Differentiation: ***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***

In the absence of specifically documented details regarding USOs, it is impossible to say whether there is any differentiation between operators or defined criteria for this.

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

Operator licences are not publicly available. There is no evidence of the publication of any details regarding USOs by what is now the Department of Telecommunications and Information Technologies.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

There is no requirement under the 2001 'Basic Telecommunication Law' for operators to report their progress in fulfilling USOs. Again this might be provided for under the required "General Plan for Universal Access"[362].

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

There is no evidence of the publication of progress by operators towards meeting their USOs; nor is there any requirement for this under the 2001 'Basic Telecommunication Law'.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

The 2001 'Basic Telecommunication Law' provides that the Minister may "may decree intervention" but only in respect of the incumbent "public telecommunications carrier" in the case of "failure to meet the universal access targets"[363].

4.3.1.2 Botswana

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

No such criteria are specified in either the 1995 Telecommunications Policy or the 1996 Botswana Telecommunications Act. The forthcoming Universal Access and Service (USA) Policy, which plans the establishment of a USF[364], may include such criteria, but it is currently not yet publicly available.

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361 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.

362 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 14.4.

363 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 22.2 and 22.2€.

364 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

There is no provision for periodic review of USOs in either the 1995 Telecommunications Policy or the 1996 Botswana Telecommunications Act. The forthcoming Universal Access and Service (USA) Policy may include such a requirement, but it is currently not yet publicly available.

Differentiation: ***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***

There are no criteria for distinguishing between operators in respect of the imposition of USOs in either the 1995 Telecommunications Policy or the 1996 Botswana Telecommunications Act. The forthcoming Universal Access and Service (USA) Policy might be expected to set out such criteria, but it is currently not yet publicly available.

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

Operator licences are not readily and publicly available. There is no evidence of the publication of any details regarding USOs by the regulator.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

There is no requirement under the 1996 Botswana Telecommunications Act for operators to report their progress in fulfilling USOs, and no evidence available that such reports are provide to the regulator. The 1996 Botswana Telecommunications Act does contain a generic disclosure provision giving the regulator the "power to require, from any person, such information including accounts, returns or estimates, as the Authority deems necessary to enable it to carry out its functions"[365]

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

There is no evidence of the publication of progress by operators towards meeting their USOs; nor is there any requirement for this under the 1996 Botswana Telecommunications Act.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

There are no enforcement mechanisms under the 1996 Botswana Telecommunications Act specific to USO contraventions. The 1996 Botswana Telecommunications Act does contain a generic revocation, suspension or endorsement clause for failure to adhere to the "conditions of any licence"[366].

[365] Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 22 (1).
[366] Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 36.

4.3.1.3 Democratic Republic of Congo (DRC)

Scope of USOs: *There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations*

The DRC's 2006 response to the ITU ICT Eye Survey states that fixed and mobile operators with significant market power or dominance are subject to universal service obligations.[367]

Although the law does not list criteria for imposing universal service obligations, the text creating the universal service fund is found in the section of the law addressing the temporary exclusivity of "the public operator" (presumably, the incumbent).[368] The Law also provides that operators' licences are to contain, among other things, the operator's service area and the level of the operator's contribution to research, education and standards-setting.[369]

In a 2000 *Arrêté* applicable to fixed and mobile operators, the Ministry ordered that operators must provide a service that is of "international" quality, at the lowest possible cost and accessible to the greatest number of users.[370]

Review Process: *USO criteria and their implementation and impact are subject to a defined and regular process of review*

No such provisions are in the Law.

Differentiation: *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*

The DRC's 2006 response to the ITU ICT Eye Survey states that fixed and mobile operators with significant market power or dominance are subject to universal service obligations.[371]

Publication of USOs: *Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency*

The licences are not published.

Monitoring: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator*

The Telecommunications Law provides for certain specific penalties for particular transgressions of the law, but not for failure to meet universal service obligations. It has a general penalty provision, however, which provides that violations of the law are subject to general "transactional" fines, the amounts of which are periodically reviewed by the Minister.[372] The procedural aspects of how the regulator is to advise licensees of violations of applicable law or their licences, and how it or the Ministry determines the appropriate penalty is set forth in a 2004 *Décision*.[373]

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367 *Universal Service Profile Congo (Dem. Rep.)*, ITU World Telecommunication Regulatory Database (2006).

368 *Id.* at Art. 39.

369 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo* (2002) at Art. 21(a), (g).

370 *Arrêté Ministeriel No. 003/CAB/MN/PTT/K/2000 du 31 Janvier 2000 Fixant le Cahier des Charges pour Operateurs en Téléphonie Cellulaire Mobile ou Fixe* (Jan. 31, 2000) at Art. 3.

371 *Universal Service Profile Congo (Dem. Rep.)*, ITU World Telecommunication Regulatory Database (2006).

372 *Id*. at Art. 68; *see also Loi No. 014/2002 du 16 Octobre 2002 portant Creation de l'Autorité de Régulation de la Poste et des Télécommunications* (Jan. 25, 2003) at Art. 3(q).

373 *Décision No. 004/CLG/ARPTC/2004 Fixant les Règles de Procédure Applicables en Cas de Manquements par les Opérateurs ou de Télécommunications à Leurs Obligations Légales* (Aug. 1, 2004).

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

No such details are published.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

The Telecommunications Law provides for certain specific penalties for particular transgressions of the law, but not for failure to meet universal service obligations. It has a general penalty provision, however, which provides that violations of the law are subject to general "transactional" fines, the amounts of which are periodically reviewed by the Minister.[374] The procedural aspects of how the regulator is to advise licensees of violations of applicable law or their licences, and how it or the Ministry determines the appropriate penalty is set forth in a 2004 *Décision*.[375]

4.3.1.4 Lesotho

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

There are no specified criteria for the imposition of USOs under the 2000 Lesotho Communications Authority Act, but the regulator recommended in 2002 that USOs be imposed on all fixed and mobile operators[376]. Those licences publicly available attest that, not only has this been the case[377] but that USOs have been extended to at least one additional operator[378].

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

The 2000 Lesotho Communications Authority Act does not provide for any formally stipulated process of review of USOs, The development of a Universal Service Strategy by the regulator was, however, undertaken through a public consultative process[379]. The final strategy document itself is unfortunately not publicly available.

Differentiation: ***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***

There is no indication of any distinction in terms of USOs being drawn between dominant and non-dominant-operators, nor is the re any basis for such a distinction in the law.

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374 *Id*. at Art. 68; *see also Loi No. 014/2002 du 16 Octobre 2002 portant Creation de l'Autorité de Régulation de la Poste et des Télécommunications* (Jan. 25, 2003) at Art. 3(q).

375 *Décision No. 004/CLG/ARPTC/2004 Fixant les Règles de Procédure Applicables en Cas de Manquements par les Opérateurs ou de Télécommunications à Leurs Obligations Légales* (Aug. 1, 2004).

376 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf, 5.2.

377 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru & LTA (2001) 'Licence Granted by the Lesotho Telecommunications Authority to Vodacom Lesotho (Pty) Ltd for the Operation of Mobile Systems and the Provision of Mobile Services on 2001-10-11', Lesotho Telecommunications Authority, Maseru.

378 LTA (2001) 'Licence Granted By The Lesotho Telecommunications Authority To Bethlehem Technologies Lesotho (Pty) Ltd For The Operation Of Satellite Earth Station And For The Provision Of Internet And Broadcasting Carrier Services On 2001-10-01', Lesotho Telecommunications Authority, Maseru.

379 LCA (2010) 'Lesotho Communications Authority Annual Report 2007/2008', Lesotho Communications Authority, Maseru, p15.

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

While USOs are specified in operator licences, this is not comprehensively done. For example, the "rollout targets" for the fixed line operator only distinguish between urban and rural lines, and make no distinction in the case of payphones[380]. The "system expansion requirements"[381] in the case of the mobile operators do not appear to be publicly available.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

Licensees are required to maintain such information as is required by the regulator to undertake its functions, and to provide such information on request[382].

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

While the regulator has the right to publish non-confidential information provided to it by licensees[383]., including information on USOs, none appears to have been published.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

In the case of the fixed line operator the penalties for failure to meet USO targets are clearly set out in the licence, and are proportional to the transgression[384]. In the case of the mobile licences, such as that issued to Vodacom, the penalties for failure to meet USO targets are unclear and appear to be at the discretion of the regulator[385].

4.3.1.5 Madagascar

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

Article 4 of the 2006 Universal Access Decree provides that all public network operators and service providers shall be subject to universal access obligations within their coverage area

380 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, Annex B.

381 LTA (2001) 'Licence Granted by the Lesotho Telecommunications Authority to Vodacom Lesotho (Pty) Ltd for the Operation of Mobile Systems and the Provision of Mobile Services on 2001-10-11', Lesotho Telecommunications Authority, Maseru, 22 & LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, 22.

382 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, Annex B

383 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, Annex B

384 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, Annex B.

385 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, 1.3.

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

Article 4 (2) of the 2006 Decree provides that the USOs are defined in the licence, but does not include provisions relating to the review of USOs.

Differentiation: ***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***

Article 4 of the 2006 Universal Access Decree provides that all public network operators and service providers shall be subject to universal access obligations within their coverage area

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

Article 4 (2) of the 2006 Decree provides that the USOs are defined in the licence, but does not include provisions relating to the review of USOs. The licences are not published on the regulator's website.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

The 2006 Decree does contain any specific requirements relating to providing information to allow monitoring of progress or regular reporting requirements. However, Article 16 of the 2006 Decree provides that OMERT monitors the respect of licence conditions by operators, and Article 7 of the telecommunications law provides that operators must provide the regulator with any information it requests. Operators are required to file an annual report providing information such as gross telecommunications service revenues, which is presumably used to calculate their contributions to the fund.[386]

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

In accordance with paragraph 6 of Article 7 of Decree 2006-616. OMERT is obliged to publish a yearly report of Fund activity.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

Article 16 of the 2006 Decree provides for enforcement mechanisms, including the withdrawal of the universal access licence. Article 39 of the Law provides that operators must respect their licence conditions, including coverage obligations and provides for the following sanctions: fine, withdrawal, suspension or reduction of term of licence.

386 *Décret No. 99-227 définissant les procédures et mesures à appliquer par l'Office Malagasy d'Etudes et de Régulation des Télécommunications (OMERT) pour la réglementation du secteur des télécommunications dans le cadre de la Loi No. 96-034* (March 24, 1999) at Art. 87

4.3.1.6 Malawi

Scope of USOs: *There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations*

Specific criteria for the imposition of USOs are not laid down in the law, but appear to be imposed only on fixed and mobile operators, in terms of whose licences they are "obliged to meet these [USO] commitments [according] to a timetable without recourse to any subsidy[387]. There are currently no sections in the pending draft legislation, dealing with USOs, save that which imposes a "public service obligation" on the national broadcaster[388].

Review Process: *USO criteria and their implementation and impact are subject to a defined and regular process of review*

There is no evidence that the implementation of USOs has been subject to periodic review, nor is this required in terms of the 1998 Malawi Communications Act.

Differentiation: *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*

With the licences issued to the fixed and mobile operators not being publicly available, it is not possible to identify any differentiation between USOs imposed on different classes of operator. The 1998 Malawi Communications Act does not suggest any basis for such a differentiation. Pending legislation does, however, currently contain provisions dealing with "dominant" operators and those with "significant market power"[389].

Publication of USOs: *Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency*

The USO commitments are set out in the licences of the fixed and mobile operators[390], but neither the obligations nor the licences are publicly available.

Monitoring: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator*

The regulator states that it "monitors the activities of licensees to enforce compliance with set regulations, the law and licence conditions"[391], which would presumable include compliance with USOs.

Publication of Progress: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency*

There is no evidence of the publication of compliance with USOs on the web site of the regulator.

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387 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 8.

388 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 73.

389 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 28 (3).

390 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 8.

391 MACRA (2009) 'Regulatory Report of Malawi Communications Regulatory Authority (MACRA)', Presented to the CRASA 12th AGM, Malawi Communications Regulatory Authority, Lilongwe, p 3.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

Sanctions and associated procedures for non-compliance with USO requirements would presumably be spelt out in the operator licences, but none of these is publicly available. There is some evidence of enforcement of USOs through the revocation of the licence issued to G Mobile and the imposition of financial penalties for failure to meet rollout obligations[392].

4.3.1.7 Mauritius

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

Section 7 of the Universal Service Regulations 2008 provides that the Authority shall designate one or more universal service providers following a bidding exercise open to all licensees.

The 2004 National Telecommunications Policy also provides that the implementation of USO for providing more and better services to the public would be undertaken by all facility-based carriers who will be reimbursed from the USF. Other service-based carriers will also be encouraged to participate in USO provision subject to technical feasibility and they will also benefit from reimbursement from the USF.

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

The 2009 ICTA Country Report for CRASA provides that the operations and objectives of the USF programmes shall be subject to periodic review and revisions, both within the Authority and through public comment and consultation process.

The Fund administrator will issue an annual report containing at least the following information:

- Financial reports (collections, expenditures, reserves, etc…)
- Description of projects that were funded.
- Goals and budgets of the USF for the coming years
- Review of previously funded projects.
- Revisions to target objectives and estimates of progress.

Differentiation: ***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***

Section 7 of the Universal Service Regulations 2008 provides that the Authority shall designate one or more universal service providers following a bidding exercise open to all licensees. No differentiation is made.

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

Section 7 of the Universal Service Regulations 2008 provides that the Authority shall designate one or more universal service providers following a bidding exercise open to all licensees.

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[392] MACRA (2009) 'Revocation of G Mobile's Licence', Press Release, issued by Malawi Communications Regulatory Authority, Lilongwe, 20 September, 2010.

Every designated universal service provider shall enter into an agreement with the Authority which shall provide for:

- Such universal service as may be determined by the Authority;
- The imposition of performance targets;
- The sum to be paid from the Fund to the Universal Service Provider;
- Such other terms and conditions that the Authority may determine.

There are no provisions relating to the publication of obligations.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

There are no specific provisions relating to the monitoring of progress on Universal Service Obligations in the law.

However, the 2001 Information And Communication Technologies Bill does provide that the Authority shall provide economic and technical monitoring of the information and communication industry in accordance with recognized international standard practices, protocols and having regard to the convergence of technology, and establish, for public operators, performance standards and linkage standards in relation to the provision of international and local telephone services, and monitor compliance with both of those standards."[393]

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

The 2009 ICTA Country Report for CRASA provides that the Fund administrator will issue an annual report containing at least the following information:

- Financial reports (collections, expenditures, reserves, etc…)
- Description of projects that were funded.
- Goals and budgets of the USF for the coming years
- Review of previously funded projects.
- Revisions to target objectives and estimates of progress.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

Section 8 (b) of the Universal Service Fund Regulations, 2008, provides that where the Authority is satisfied that the designated service provider has without reasonable cause failed to meet any performance target imposed under the universal service agreement concluded with the Authority, it may retain any payment due to the designated service provider.

In accordance with the USF Payment Form as published by ICTA[394], conditions for payment and enforcement mechanisms include:

- *As per the Information and Communication Technologies (USF) regulations 2008, the monthly instalment for a given month shall be paid not later than 60 days after the end of that month;*

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393 Mauritius 2001 Information and Communications Act, Part III, Article 18.1.

394 USF Payment Form, available at: www.icta.mu/market/quarterly.htm

- *Should the last date for payment coincide with a week-end or public holiday, payment are effected on the next working day;*
- *For payment received after the specified deadlines, with due consideration to note 2 above, a surcharge of 1% per month on the amount due will be payable over and above the applicable payment into the USF for the relevant month.*

4.3.1.8 Mozambique

Scope of USOs: *There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations*

The Law provides that telecommunications licences may include universal service obligations and makes no distinctions between types of operators.[395]

Review Process: *USO criteria and their implementation and impact are subject to a defined and regular process of review*

The Law provides that INCM determines objectives yearly and defines projects at least once every two years.[396]

Differentiation: *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*

There is no distinction drawn.

Publication of USOs: *Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency*

Obligations are not published.

Monitoring: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator*

Operators are obliged to provide the Universal Service Fund Unit with regular reports on progress and use of funds.[397]

Publication of Progress: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency*

Article 16 of the Universal Service Decree (Decree 69/2006) provides that the Universal Service Fund unit shall publish yearly and multi-annual activity reports and financial reports as well as implementation reports and reports of audits. The Activity report and financial report as well as the report on the audit must be published in a major newspaper every year.[398]

Enforcement: *If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view*

There are no such provisions in the law.

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395 Law 08/2004, Article 39.
396 Law 08/2004, Article 38-40.
397 Decree 69/2006, Article 16 (4).
398 Decree 69/2006, Article 16 (1-3).

4.3.1.9 Namibia

Scope of USOs: *There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations*

The 2009 Communications Act provides for the regulator to follow "a rule-making procedure" to establish which services are subject to USOs[399]. There is no evidence that this procedure has yet been undertaken. The regulator may also require "mandatory provision of universal service" [400] within any licence it issues. Existing licences, issued under previous legislation, are not readily available to determine if they contain USOs.

Review Process: *USO criteria and their implementation and impact are subject to a defined and regular process of review*

There is no specific provision in 2009 Communications Act requiring the parameters of USOs and their implementation to be reviewed.

Differentiation: *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*

There is no evidence that USOs vary from operator to operator. The 2009 Communications Act does provide for the regulator to identify "dominant" operators and to impose "specific obligations" [401] on such a licensee.

Publication of USOs: *Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency*

The existing operator licences are not publicly available. It can therefore not be determined what USOs, if any, they contain.

Monitoring: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator*

The 2009 Communications Act provides for the tabling of an annual "universal service report". It is, however, not mandatory for this to contain a progress report on the implementation of USOs[402], and there are no specific provisions in the law requiring operators to disclose information about USO progress.

Publication of Progress: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency*

The 2009 Communications Act contains extensive provisions to ensure the public availability of information in its possession[403]. If the progress of USO implementation is dealt with in the regulator's annual "universal service report", it will be tabled in parliament. With the 2009 Communications Act not yet in operation at the time of writing, no such USO progress reports have been made.

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399 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 57.

400 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 38 (10) (a).

401 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 38 (11).

402 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 58.

403 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 27.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

The 2009 Communications Act does not provide for enforcement mechanisms specific to USOs. There may be such provisions in existing licences, but these are not publicly available.

4.3.1.10 Seychelles

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

Section 2 of the 1999 Telecommunications Act provides that "universal service" means such telecommunication service as may be determined by the Minister as a service that needs to be provided by a licensee to an area or community not served, or not adequately served, by such a service. Section 28 of the Act also states that every holder of a telecommunication service licence shall pay a contribution to the Fund at such rate and at such times as may be prescribed. Section 34 also provides that every person who operates a telecommunication service shall furnish directory information in respect of its subscribers to the Minister, or to such other person, and in such manners as the Minister may direct.

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

There are no such provisions in the Act.

Differentiation: ***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***

There are no such provisions in the Act.

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

There are no such provisions in the Act.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

There are no such provisions in the Act.

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

There are no such provisions in the Act.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

There are no such provisions in the Act.

4.3.1.11 South Africa

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

The 2006 Electronic Communications Act establishes no specific criteria for determining which operator licences should contain "universal access and universal service obligations". [404].

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

There is no requirement under the 2006 Electronic Communications Act that USO criteria and their implementation are formally and periodically reviewed.

Differentiation: ***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***

The USOs imposed on operators do vary but not in accordance with any specific provision under the law". [405] The 2006 Electronic Communications Act does provide for the designation of certain operators as holding "significant market power" and hence subject to the imposition of pro-competitive conditions.[406]

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

The USOs imposed on operators are specified in the various individual licences, but these are not readily publicly available, and are not published by the regulator.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

The 2006 Electronic Communications Act contains no strong requirements regarding the provision of information to either the regulator or the UAS Agency, either generally or in respect of UAS.

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

There is no evidence of the publication of operator progress in respect of USOs by to either the regulator or the UAS Agency.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

The 2006 Electronic Communications Act make specific provision for the imposition of sanctions in respect of failure to meet rollout obligations in that any "licensee who contravenes or fails to materially comply with any specific terms and conditions contained in the licence relating to construction or placing

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404 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 8 (2) (g).

405 Lewis, C (2010) 'Achieving Universal Service in South Africa: What Next for Regulation?', paper presented to the International Telecommunications Society Conference: Telecommunications: Ubiquity and equity in a broadband environment, Wellington, New Zealand, August 2010, p 5.

406 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf Section 67.

into service of electronic communications facilities or electronic communications networks, is guilty of an offence and upon conviction... must outsource [such construction or placing into service]" .[407]

4.3.1.12 Swaziland

Scope of USOs: *There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations*

Section 35 of the [DRAFT?] Electronic Communications Bill, 2009, provides that the Commission may designate different licensees or sets of licensees to provide different elements of universal service or to cover different parts of the national territory, and shall adopt an efficient, objective, transparent and non-discriminatory designation procedure whereby no licensee is excluded beforehand from being designated. The designation procedure adopted shall ensure that the universal service obligations are provided in a cost-effective manner. No further details are provided.

Review Process: *USO criteria and their implementation and impact are subject to a defined and regular process of review*

There are no specific provision relating to a review process of USO criteria.

Differentiation: *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*

Section 35 of the [DRAFT?] Electronic Communications Bill, 2009, provides that the Commission may designate different licensees or sets of licensees to provide different elements of universal service or to cover different parts of the national territory, and shall adopt an efficient, objective, transparent and non-discriminatory designation procedure whereby no licensee is excluded beforehand from being designated. The designation procedure adopted shall ensure that the universal service obligations are provided in a cost-effective manner. No further details are provided.

Publication of USOs: *Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency*

No details are published and no provision is made for such publication.

Monitoring: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator*

There are no such provisions in the [DRAFT?] Bill.

Publication of Progress: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency*

There are no such provisions in the [DRAFT?] Bill.

Enforcement: *If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view*

There are no such provisions in the [DRAFT?] Bill.

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[407] RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf Section 74.

4.3.1.13 United Republic of Tanzania

Scope of USOs: *There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations*

The 2006 Universal Communications Service Access Act 2006 does not provide clear criteria for determining which operators are subject to universal service obligations in Tanzania. Although the law provides that the USF may "designate an operator as universal service provider", it specifies no criteria from doing so, and merely defines a universal service provider as "a person designated to provide universal services"[408].

Review Process: *USO criteria and their implementation and impact are subject to a defined and regular process of review*

There is no full and formal review process around USOs required in terms of the 2006 Universal Communications Service Access Act, although there is a requirement to "conduct research into and keep abreast of developments in the rural and urban under-served areas regarding communication services and information technologies".[409]

Differentiation: *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*

There are no criteria for distinguishing between operators in respect of USOs in either the 1993 Communications Act or the 2006 Universal Communications Service Access Act. Although the USF is required to "designate universal service providers with obligation to provide universal service in accordance with laid down criteria" ,[410] the development of such criteria is left up to the USF.

Publication of USOs: *Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency*

Every designated "universal service provider" is required to submit to the USF for approval a "policy statement" and " project proposal" , setting out how the imposed USO will be met. This approval process and its requirements are set out in some detail in the Act.

Monitoring: Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator

The 2006 Universal Communications Service Access Act gives the USF the "right to request any person to submit any information for the purpose of carrying out its functions" ,

Publication of Progress: *Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency*

The USF is required to "publish the performance of the universal service provider required to meet the services targets"[411] set out in the USOs.

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408 Universal Communications Service Access Act (2006) at Art, sections 15 (10 and (3).

409 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 6 (f).

410 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 6 (i)

411 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 17 (1)

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

The 2006 Universal Communications Service Access Act makes no specific provision for penalties to be imposed if a universal service provider fails to meet the required targets. All that is set out is the requirement to "establish compensation schemes in the event of failure... to meet the [supply-time and QoS] targets"[412] set out in the USOs.

4.3.1.14 Zambia

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

The standard terms and conditions for licences published by the regulator imply that all licensees are subject to the imposition of USOs[413].

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

This is not specifically required in terms of the 2009 ICT Act. There is, however, also nothing in the law which prevents the regulator from instituting such a periodic process of review.

Differentiation: ***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***

With specific individual network or service licences currently not publicly available, it is unclear whether or how USOs vary from one licensee to another, The 2009 ICT Act does provide for a process to identify operators dominant in specific market segments, but provides only for the imposition of additional obligations in respect of interconnection, access to facilities and tariffs[414].

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

Specific individual network or service licences in which the imposition of USOs[415] would be fleshed out in detail are not as yet publicly available. Nor has the regulator as yet issued any regulations relating to this.

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412 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 13 (3)

413 ZICTA (nd) 'Network Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/network-licence.html & ZICTA (nd) 'Service Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/service-licence.html, clauses 9 & 7 respectively.

414 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, sections 39 – 52.

415 ZICTA (nd) 'Network Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/network-licence.html & ZICTA (nd) 'Service Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/service-licence.html, clauses 9 & 7 respectively.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

The 2009 ICT Act requires operators to provide the regulator with "such documents and other information as [it] may require for the better carrying out of its functions under [the] Act"[416]. There is no evidence, however, that this provision has been invoked as yet in respect of USOs by the regulator.

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

There is no evidence of any publication to date by the regulator in respect of operator progress towards fulfilling USOs.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

The standard terms and conditions for licences published by the regulator provide for a range of sanctions that may be imposed after due process in the case of failure to adhere to the terms and conditions (which would include failure to adhere to USOs). Such sanctions may include a public apology, fines and even revocation of the licence[417].

4.3.1.15 Zimbabwe

Scope of USOs: ***There are specific criteria for determining which operators have or are subject to Universal Access and Service obligations***

There are no specific criteria in the 2000 Postal and Telecommunications Act for determining which operators are subject to the imposition of USOs: they are imposed on all cellular telecommunication, postal and telecommunication licensees via the individual licences.[418]

Review Process: ***USO criteria and their implementation and impact are subject to a defined and regular process of review***

The 2000 Postal and Telecommunications Act contains no provisions for a periodic review of USOs and their operation.

Differentiation: ***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***

Because the detailed specification of USOs is contained in operator licences, and because these are not publicly available documents, it is not possible to ascertain any differentiation or the basis for this. The 2000 Postal and Telecommunications Act contains no provisions for distinguishing between dominant and non-dominant operators.

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416 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 90 (1).

417 ZICTA (nd) 'Network Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/network-licence.html & ZICTA (nd) 'Service Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/service-licence.html, clauses 14 & 15 respectively.

418 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 94 (4).

Publication of USOs: ***Comprehensive details of Universal Access and Service obligations are specified in each operator's licence and published by the designated agency***

The 2000 Postal and Telecommunications Act specifies that USOs will be set out in the various operator licences.[419] The individual operator licences are not publicly available; nor has the regulator published details of the USOs.

Monitoring: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly provided to the regulator/designated agency by the operator***

There are no specific provisions within the 2000 Postal and Telecommunications Act requiring operator disclosure of information to the regulator, either in general or with respect to USOs. Such provisions may be contained in the various operator licences, but these are not publicly available.

Publication of Progress: ***Comprehensive details of progress on the fulfilment of Universal Service obligations are regularly published by the regulator/designated agency***

There is no requirement in the 2000 Postal and Telecommunications Act that USO progress with respect to benchmarks specified in the various operator licences be published by the regulator, and no evidence of any such publication.

Enforcement: ***If the operator fails to meet its Universal Access and Service obligations, or contribution requirements, clear and proportionate enforcement mechanisms are in place as well as mechanisms by which operators can present their point of view***

The 2000 Postal and Telecommunications Act provides for the regulator to intervene in respect of, inter alia, when "a licensee has failed to comply with any term or condition of the licence"[420] which would clearly include failure to meet USOs imposed via the licence. A detailed escalatory process is specified, providing for the issuance of compliance orders, the imposition of financial penalties, leading to possible suspension or revocation of the licence, and providing for licensee responses.

4.4 International Case Studies

4.4.1 ECOWAS

The ECOWAS Supplementary Act on Universal Service mandates that in monitoring and reviewing policies, Member States must, on one hand, adopt measurable targets for improving connectivity and access to ICT use, which can be based on distance, population density or length of time needed to have access to ICTs. On the other hand, Member States must hold periodic reviews of universal access and service policies, regulations and practices in order to adapt to the evolving nature of ICT services and end-user needs.

The Act provides that Member States shall periodically review the scope of the universal service, focusing on proposals for its modification or redefinition. The first such review shall be held no later than two years following the date of the Act's entry into force, and thereafter a review shall be held every three years. The review shall consider social, economic and technological developments, and shall have particular regard to data mobility and transfer rates for the technologies most widely used by the majority of subscribers. Member States shall inform the Executive Secretariat of ECOWAS of any changes.[421]

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419 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 94 (4).

420 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 43.

421 *Id.* at Art. 13.

In terms of enforcement, the ECOWAS Supplementary Act on Universal Service provides that Member States shall ensure that the companies entrusted with the task of providing users with services under the universal service regime provide the national regulatory authority with a regular account of their activities and results achieved. National regulatory authorities shall also establish performance objectives for companies assuming universal service obligations.[422]

Pursuant to the ECOWAS Supplementary Act on the Legal Regime Applicable to Network Operators and Service Providers, individual licences may specify results to be achieved for the provision of universal access and service.[423] An entity's persistent failure to achieve the performance objectives and quality levels specified may entail the application of sanctions by the national regulatory authority. National regulatory authorities are also entitled to require independent verification of an operator's performance of the obligations imposed on it.[424]

4.4.2 EU

In all 27 BEREC countries, the principle of Universal Service obligation is provided for by law.

According to the 2010 BEREC Report on Universal Service, USOs are imposed on undertakings by NRA decision countries (e.g. Bulgaria, Iceland, Sweden and Switzerland) whereas in other countries (e.g. Spain, Portugal and The Netherlands) the undertaking is appointed by government decree. In Ireland the undertaking which has to provide the Universal Services is appointed by the NRA, after prior consent with the Minister of communication (Minster for Communications Energy and Natural Resources). In Germany no undertaking has been designated to provide the Universal Service(s). In Sweden until 2004, Telia Sonera was required to provide phone service and other US obligations to the whole country. As the Telia Sonera universal service obligations expired, in 2005 the Swedish NRA (PTS) decided to put Telia Sonera under a new USO-scheme, and ordered the company to meet the need for phone service in Sweden, at a reasonable price. Telia Sonera appealed against the decision and won. Therefore, since 2007, there is no operator designated for USO.

In 20 countries (representing 60% of the BEREC countries) all the elements of universal service obligations are provided by a single undertaking, with the incumbent being designated in all cases as the universal service provider (USP). 8 countries organised separate procedures for the different elements of the USO, giving the opportunity of designating multiple USPs for the different services. In one country, all providers are designated by law to provide one of the elements of the USO (social tariffs). In 4 countries there is no universal service obligation imposed on any undertaking.[425]

The criteria used for the designation of the USPs vary largely from country to country and from one USO element to another. The majority of BEREC countries employ a combination of technical and economic-financial criteria, which are applied at the different stages of the designation process. Where public tender procedures are used, there is normally a first layer of criteria (qualification criteria) which apply in order to ensure that the participants to the selection procedure have the necessary qualifications to stand as a candidate for designation, followed by a second layer of criteria (selection or evaluation criteria) which are meant to ensure that the candidate who best meets the USO requirements is selected for designation as USP.

In Europe, again according to the 2010 BEREC Report, most countries have imposed performance targets regarding universal service either through NRA decisions or decrees. In some cases the NRAs introduce

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422 *Id.* at Art. 17.

423 ECOWAS Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers (2007).

424 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service at Art. 17(3).

425 2010 BEREC Report, pg. 34.

extra performance targets for the universal service providers whether by tender documentation or by designation decisions. In other countries (e.g. Bulgaria, Germany, Malta, The Netherlands, Norway and the UK), there are no specific performance targets regarding the universal services, however most of these countries do have rules about the publication of certain quality targets.

In terms of enforcement, the NRA is generally mandated to enforce compliance with Universal Service Obligations, and empowered to impose fines when an undertaking does not comply with its Universal Services Obligations. According to the 2010 BEREC report, the NRA in Austria may impose specific actions upon a USO Provider. The Telecommunications Offices (subordinate to the National Telecommunications Authority) may also impose fines. In Finland the NRA may impose conditional fines and penalty fees, if an operator violates the regulatory obligations and fails to rectify its action within a reasonable time. The penalty fee however is determined by the Market Court upon the NRA's request. In Ireland the NRA may apply to the High Court for an order as may be appropriate by way of compliance with the obligation, requirement or direction. In certain circumstances the Regulator may apply in summary manner to the High Court for an order compelling compliance.

In Poland, the NRA may impose a financial penalty on a manager of a telecommunications undertaking of up to 300 % of his/her monthly remuneration, whereas in Germany the NRA may order such measures as are necessary to secure fulfilment of the obligations. Penalties may not exceed 500,000 Euros in accordance with the Administrative Enforcement Act, and a reasonable time limit is to be set to allow the undertaking to comply with the measures.

The Swedish government has “subcontracted” the right to enforce the USO to the monitoring agency PTS. PTS has the option to impose fine and penal sum on an actor that is not willing to cope with USO decisions. In Spain the appointed authorities to guarantee the compliance of USOs are the Ministry of Industry, Tourism and Commerce as well as the NRA. The instruments applied to guarantee the compliance of the obligations are the imposition of sanctions and of corrective fines.

4.4.3 Australia

In Australia, government has recognised since the 1990s that the best long-term strategy for improving telecommunications services and providing services to consumers is to encourage effective competition within the telecommunications sector. This liberalisation process was initiated in 1997, with the telecommunications industry being opened up to wider competition, which brought more choice in the supply of telephone services to consumers. The market is now open, with multiple telecommunications service providers offering a wide range of services including basic telephone services, mobile services, internet access and pay TV.

Apart from liberalisation, the Australian government also introduced the Universal Service Obligation (USO), which has the objective of ensuring that standard telephone services and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they live or carry on business. A standard telephone service is a voice telephone service that meets the any-to-any connectivity test. Standard telephone services include services equivalent to voice telephony that are provided to people with disabilities to meet the requirements of the Disability Discrimination Act 1992. This applies to communication services to people who are deaf or have a hearing or speech impairment.

Telstra has been designated as the primary universal service provider and is required to fulfil the USO. As the primary universal service provider, Telstra must ensure that all people in Australia have reasonable access to standard telephone services and payphones. The supply of standard telephone services includes consumers having access to an efficient and reliable telephone service, good voice reception and responsive fault repair. Service supply is subject to normal commercial charges and to government price caps where these apply. Service providers other than Telstra make a commercial decision as to where they offer services and may not service all areas.

The universal service obligation (USO) is the obligation placed on universal service providers (USPs) to ensure that standard telephone services, payphones and prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.

A separate obligation related to the USO is the digital data service obligation (DDSO) and the special DDSO (SDDSO). The DDSO is the obligation placed on a digital data service provider to ensure that digital data services are accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. The SDDSO applies to customers unable to receive service under the general DDSO because they are not close enough to the necessary network infrastructure.

Telstra is a carrier declared by the Government to fulfil the digital data service obligation throughout Australia. The digital data service obligation is the obligation to ensure that either:

(i) general digital data services; or

(ii) special digital data services;

are reasonably accessible to all people in Australia on an equitable basis, no matter where they live or conduct business.

Section 27 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 requires a universal service provider to lodge a Universal Service Plan (USP) outlining how it intends to fulfil the USO. Each plan must be approved by the Minister. Under section 39 the universal service provider must take all reasonable steps to ensure that the Plan is complied with, although the Act does not provide for penalties for non-compliance.

As the universal service provider, Telstra is obliged to have a policy statement and marketing plan approved by the ACMA. The policy statement and marketing plan outline how Telstra intends to fulfil its obligations as universal service provider, including fulfilling its obligations to people with a disability, people with special needs and eligible priority customers.

Although Telstra's USP was approved in May 1998, the Minister also indicated that the ACA would conduct a review of the Plan. This review was released in March 1999. It recommended:

- the amendment of the USP to require the provider to offer interim phone services by satellite where appropriate;
- updating of the USP to reflect current arrangements for the provision of equipment to people with disabilities;
- that the USP contain more specific targets for the provision of payphones, a three day objective for repairs to remote telephone services and a commitment to a monitoring and reporting regime.

Telstra will be taken to have fulfilled its universal service obligation to persons under the Act by supplying and maintaining the first standard telephone service to another person (the customer) at each particular place of residence or place of business, if that standard telephone service is reasonably accessible to persons other than the customer reasonably requiring the use of that service in that property or place.

Details of how Telstra fulfils its USO are set out in its Universal Service obligation Policy Statement and Universal Service Obligation Standard Marketing Plan. These documents cover matters such as Telstra's general approach to fulfilling the USO, as well as service availability, service description, service quality, connection and fault repair timeframes, interim services, priority services and complaint processes.

There is no regulatory requirement on Telstra to provide USO services using particular types of technologies. This is a matter for Telstra. For example, Telstra can provide USO services using copper cables, radio links (satellite and terrestrial), mobile phones and broadband.

Maximum timeframes for supply and repair of the STS are outlined in Telstra's standard marketing plan. These are dependent on:

- the existence of a previous connection
- the population of the specific area and
- the availability of Telstra infrastructure (such as local telephone exchanges, main cables and radio distribution systems).

Telstra's standard marketing plan and policy statement provide benchmarks against which performance of its STS can be measured, and information about USO services and obligations. They can be obtained from the ACMA website or the Telstra website.

Telstra's STS performance is monitored by the ACMA and is published quarterly on the ACMA website and annually in the Telecommunications Performance Bulletin.[426]

4.4.4 Uganda

The UCC has the authority to designate operators as universal service providers and as such they would then have an obligation to provide universal services.[427] This obligation may be imposed on a nation-wide basis or for a specified universal service area. The UCC has determined further that all operators issued facilities-based licences will be designated as operators with a universal service obligation with respect to the services provided under that licence or other services that the Commission may determine at a later date.[428] There is no distinction drawn between universal service obligations on dominant versus non-dominant operators, however, the UCC does note that operators with annual revenues above one hundred million shillings shall be designated a universal service operator.[429]

The UCC imposes a policy statement and marketing plan obligation on universal service providers. The draft policy statement is viewed as a general statement issued by the universal service provider outlining its provision of services and equipment covered under the universal service obligation. The draft marketing plan has to include time frames for supply of services, as well as performance standards for fulfilment of universal service obligations and the processes for advising persons on the availability, offer and supply for equipment goods or services to fulfil the universal service obligation.[430]

Prior to the issuance of the policy plan or the marketing plan, or submission of these two documents to the UCC for approval, the universal service provider must publish a preliminary version and solicit public comments on the draft plans within a specified time period.[431] Consideration must be given to public comments received and editorial changes made to reflect the nature of the input received.

Before granting approval to the universal service providers' draft policy statement, the UCC will review it to ensure that the draft addresses supplying services and appropriate equipment to those individuals with disabilities or special needs, as well as the pricing of services offered.[432]

In its review of the provider's marketing plan, the UCC will review the specificity of the plan with respect to how the provider will fulfil its universal service obligations, as well as establishing the terms and conditions for the supply of services or equipment for universal service.[433]

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426 See: www.acma.gov.au/WEB/STANDARD/pc=PC_2483
427 The Communications (Universal Service) Regulations. at Art. 7.
428 *Id*.
429 *Id*.
430 The Communications (Universal Service) Regulations. at Art 9.
431 *Id*.
432 *Id*.
433 *Id*.

The UCC will issue a formal written notice of its decision regarding the universal service providers draft policy statement and marketing plan. If the Commission does not grant approval to either of the plans it will provide written notice to the universal service provider as to the reasons for refusal, and likely would indicate a time period during which the provider can revise and resubmit new plans.

5 Universal Service Financing

5.1 Background

The 2002 SADC Policy guidelines on universal service provide for the following in relation to universal service financing:

> *6.1 There are several methods of funding Universal access and service, one of which is Universal Service Fund (USF). The purpose of the universal service fund is to be an ancillary tool for funding development of the information and communications sector in underserved areas;*

The financing of Universal Access and Service has gone through various stages, ranging from the application of revenues from cross-subsidies to finance non-profitable areas under a monopolistic scenario, to the creation of Universal Service Funds funded solely from operator levies so as to be able to finance Universal Access and Service projects in a competitive market. Obviously, there are a range of other solutions between these two solutions.

Over the last decade, Universal Service Funds were created in many countries to finance network expansion, especially in difficult and unprofitable areas. This financing mechanism relies on the use of private operators to extend coverage. Such operators' universal service activities are subsidized by a fund for universal service or access, which may grant subsidies to these operators to make the proposed rural or regional areas more attractive for potential operators. New entrants or existing operators may also compete for grants to enable the creation of the network in unprofitable areas, the subsidy being granted to the operator requesting the lowest amount of subsidy or proposing the largest deployment, or a combination of both, called a system of "smart subsidies." These grants are usually paid on delivery of services and not when the network is delivered, that is to say, when the operator connects the villages and is actually not a recurring grant.

Several trends have been observed since the establishment of Universal Service Funds for the development of universal access:

- *The emergence of mobile telephony has overtaken fixed telephony through its ability to cover remote rural areas.*
- *The concept of access has evolved.*
  - *Latin American countries have been forerunners in the development and use of ICT Development Funds with universal service no longer focusing on connecting remote areas to basic services (voice, phone booths) but rather on the introduction of more advanced services for the same areas (mobile coverage in "white" areas even broadband access).*
  - *In numerous countries in Africa, Internet services and ICT has been integrated into the definition of universal access and are now also eligible for funding from the ICT Development Fund – for example: Senegal, Burkina Faso, and Uganda*
- *Funding for the development of ICT services has been integrated into actions that could be financed by universal service financing.*
  - *Apart from the provision of access in rural and isolated areas, many countries have underlined the need to develop ICT content and applications targeting these same areas.*

The development of ICT applications and local content will increase the use (and viable) access available to rural populations.

More and more however, countries have been recognizing that there are other and more efficient ways to achieve a more wide-spread access to communications.

Important is that countries do not focus solely on the creation of a Universal Service Fund and see it as the only way in which Universal Access and Service will be achieved, but that such Funds are seen as a tool amongst tools, and that in order to achieve Universal Access and Service, a variety of tools (as described throughout this document) are needed. Other public finance mechanisms such as loan guarantees and public private partnerships (PPPs) to enhance and target investments into priority areas in need of special finance may be applied and achieve Universal Access and Service more effectively.

Recently, such alternatives to Universal Service Funds have gained momentum around the world. Thus, for example, in September 2009, the European Commission adopted Guidelines 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. The Guidelines also contain specific provisions concerning the deployment of Next Generation Access networks, allowing public support to foster investment in this strategic sector without creating undue distortions of competition.[434]

The main aim of the Guidelines is to facilitate a rapid deployment of such networks in Europe by providing to all stakeholders (including local and regional authorities, as well as network operators) a clear, predictable and comprehensive framework for the public financing of such networks.

In the United States, The Recovery Act, passed on 13 February 2009,[435] appropriated $7.2 billion and directed the Department of Agriculture's Rural Utilities Service (RUS) and The Department of Commerce's National Telecommunications Information Administration (NTIA) to expand broadband access to unserved and underserved communities across the U.S., increase jobs, spur investments in technology and infrastructure, and provide long-term economic benefits. The result is the RUS Broadband Initiatives Programme (BIP) and the NTIA Broadband Technology Opportunities Programme (BTOP).[436]

Funded at $4.7 billion, BTOP provides grants to support the deployment of broadband infrastructure in unserved and underserved areas, to enhance broadband capacity at public computer centres, and to encourage sustainable adoption of broadband service. Through this support, BTOP will also advance the Recovery Act's objectives to spur job creation and stimulate long-term economic growth and opportunity. BIP will make loans and grants for broadband infrastructure projects in rural areas.

The first round of these grant and loan programmes produced about 2 200 applications requesting nearly $28 billion in funding – almost seven times the amount of funding available in that round – for proposed broadband projects reaching all 50 U.S. states, 5 territories, and the District of Columbia. The agencies are currently reviewing these applications and expect to award up to $4 billion in loans, grants, and loan/grant combinations in this round. The agencies expect to begin announcing funding awards in December 2009.[437]

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434 European Commission Rapid Press Release of 17/09/2009: " State aid: Commission adopts Guidelines for broadband networks", Reference: IP/09/1332, available at: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1332&format=HTML&aged=0&language=EN&guiLanguage=en

435 US Recovery Act, 2009, available at: www.recovery.gov/About/Pages/The_Act.aspx

436 www.broadbandusa.gov/

437 NTIA Press Release of 10 November 2009: " NTIA AND RUS STREAMLINE PROGRAMS TO BRING BROADBAND, JOBS TO MORE AMERICANS; Agencies Plan to Consolidate Final Two Funding Rounds, Seek Comment on Program Enhancements" , available at: www.broadbandusa.gov/files/BTOPBIP_RFI_111009.pdf

5.2 Key Elements

KEY ELEMENTS TO ILLUSTRATE VARIETY OF MECHANISMS TO FINANCE UAS

- **Range of Mechanisms:** The law establishes a variety of financial mechanisms to support provision of UAS.
- **Funding Criteria:** The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.
- **Source of Funds:** The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)
- **Cross subsidies:** Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?
- **Implicit Funding:** Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges? Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?
- **Smart Subsidies:** Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF

5.3 Assessment of National Texts

5.3.1 Summary Chart

Country / Region	Range of Mechanisms:	Funding Criteria:	Source of Funds:	Cross subsidies:	Implicit Funding:	Smart Subsidies:
Angola	×	×	×	×	×	×
Botswana	×	×	×	×	×	×
Democratic Republic of Congo (DRC)	×	×	×	×	×	×
Lesotho	×	×	✓	×	×	×
Madagascar	✓	✓	✓	✓	×	×
Malawi	×	✓	×	×	×	✓
Mauritius	×	✓	✓	×	×	×
Mozambique	×	✓	✓	×	×	×
Namibia	×	×	✓	×	✓	×
Seychelles	×	×	×	×	×	×
South Africa	×	×	✓	×	✓	×
Swaziland	✓	✓	✓	×	×	×
United Republic of Tanzania	×	✓	✓	✓	✓	×
Zambia	×	×	×	×	×	×
Zimbabwe	×	×	✓	×	×	×

5.3.1.1 Angola

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The 2001 'Basic Telecommunication Law' only makes provision for the establishment of a "Universal Service Fund"[438] as a mechanism to provide explicit financial support towards UAS.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

There is no stipulation as regards funding criteria within the 2001 'Basic Telecommunication Law'.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The law requires that "telecommunication public network carriers and the telecommunication service providers for public use will participate in financing" towards the USF, and notes that USOs cannot be offset against contributions[439]. The law appears to regard such funding as "taxes", specified in the licence issued by the Minister and to be applied by the regulator[440]. With licences not public documents, and in the absence of the putative USF charter, no further detail is available.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

The regulator is responsible for setting rates except in respect of "basic service" segments (which are defined by the Minister and regulated by the state, with due regard to differentiation between market "segments endowed with ample and effective competition" and those lacking this. Intra-service cross-subsidies are, however, banned[441].

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There is no provision for implicit funding arrangements or compensation fees under the 2001 'Basic Telecommunication Law'.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

In the absence of any evidence that the charter governing the establishment of the USF has been promulgated, and indeed of any evidence that the fund has indeed been established, there is no evidence of the implementation of a smart subsidies approach.

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438 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.1.
439 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 15.2 & 15.3.
440 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 7,2 (j).
441 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 23.

5.3.1.2 Botswana

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

Apart from a generic provision under the 1996 Botswana Telecommunications Act that the regulator may "use any surplus funds... in such manner as the Minister may approve"[442] there are no financial mechanisms in the law that might support UAS. More detail may be contained in the forthcoming Universal Access and Service (USA) Policy, which is touted to establish a USF[443], but this document is not yet publicly available at the time of writing.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

There is currently no such provision under the 1996 Botswana Telecommunications Act. More detail may be contained in the forthcoming Universal Access and Service (USA) Policy, but this document is not yet publicly available at the time of writing.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

There is currently no such provision under the 1996 Botswana Telecommunications Act. More detail is to be expected in the forthcoming Universal Access and Service (USA) Policy, in relation to the USF which it established, but this document is not yet publicly available at the time of writing.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

Although the 1996 Botswana Telecommunications Act does empower the regulator to set tariffs[444], there is no provision for cross subsidies, nor any evidence that any are in place.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There is currently no such provision under the 1996 Botswana Telecommunications Act. There may be proposals to this effect in the forthcoming Universal Access and Service (USA) Policy, but this document is not yet publicly available at the time of writing.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

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442 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 10 (2).

443 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

444 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 18.

Smart subsidies are not foreseen in the 1996 Botswana Telecommunications Act. There may be provision for them in the forthcoming Universal Access and Service (USA) Policy, but this document is not yet publicly available at the time of writing.

5.3.1.3 Democratic Republic of Congo (DRC)

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

Article 40 provides that licence fees, and taxes and other fees related to telecommunications are to be used for the development of the sector, but this seems to be a separate concept from the universal service fund itself, which is created in Article 39.[445] There are no further provisions are in the law.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

No such provisions are in the law. Article 39 of the law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

Article 40 of the law provides that licence fees, and taxes and other fees related to telecommunications are to be used for the development of the sector, but this seems to be a separate concept from the universal service fund itself, which is created in Article 39.[446]

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

No such provisions are in the Law.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

No such provisions are in the Law.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

Article 39 of the general telecommunications law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued. Article 40 provides that licence fees, and taxes and other fees related to telecommunications are to be used for the development

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445 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo* (2002) at Arts. 39-40.

446 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo* (2002) at Arts. 39-40.

of the sector, but this seems to be a separate concept from the universal service fund itself, which is created in Article 39.[447]

5.3.1.4 Lesotho

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The 2000 Lesotho Communications Authority Act only provides for a USF which the regulator "may establish"[448] as the sole financial mechanism for supporting UAS interventions.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

There are no UAS funding criteria specified in the 2000 Lesotho Communications Authority Act. The recent set of regulations establishing Lesotho's USF requires the adoption of "transparent and competitive procurement practices"[449], but provides no further detail.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The recent set of regulations establishing Lesotho's USF provides for seed funding from the regulator as well as an annual contribution from the regulator's "surplus" funds, together with an annual levy of 1% on the "net operating income from licensed network operators", as well as contributions from government and miscellaneous "grants and levies"[450].

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

Although the 2000 Lesotho Communications Authority Act empowers the regulator to set tariffs, which must be "reasonable" and related to "incremental cost", there is no provision for cross subsidies nor any evidence that any are in place[451].

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There is no evidence of implicit funding of UAS, in either the legislation of the practice of the regulator.

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447 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo* (2002) at Arts. 39-40.

448 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, section 48 (2).

449 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru.

450 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru, Section 4.

451 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, Sections 40 to 44.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There is no explicit provision for smart subsidies in the recent set of regulations establishing Lesotho's USF.

5.3.1.5 Madagascar

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

Madagascar's Telecommunications Development Fund ("Fund") was created in 1999 to extend telephony service to unserved zones where such extension cannot be achieved without subsidies.[452] The Fund is also to support the expenses incurred by the regulator, the Office Malagasy d'Etudes et de Régulation des Télécommunications (OMERT), in studying and selecting operators to expand services.[453]

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

A clear disbursement mechanism is defined in the 2006 Decree, which also determines a clear and objective process for selecting projects. Within this context, OMERT determines which communities are in need of service based on a series of criteria and studies, as well as the level of subsidies necessary to achieve coverage, and submits a plan to the Ministry for approval.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The Madagascar Fund receives money from several sources:

- The government's general budget;
- Annual contributions of operators, which are equal to two percent of their gross revenues earned from operating public telecommunications networks and the provision of public telecommunications services;
- Public or private contributions to the fund; and
- Local communities seeking to improve telecommunications in their areas.[454]

There is also a geographic rate averaging requirement within operators' service areas, with certain exceptions such as pre-approved extraordinary construction charges and volume discounts.[455] OMERT collects the funds from operators.[456]

All licensed network owners and providers of telecommunications services must pay an annual contribution of two percent of their gross book revenues that were generated by the operation of their networks or the provision of telecommunications services to the public. There are no explicit exemptions

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452 *Décret No. 99-191 Portant modalités de mise en oeuvre et de financement de l'accès aux services de télécommunication* ("Decree 99-191") at Art. 7(1).

453 *Id.* at Art. 7(5).

454 *Decree 2006-661*. at Art. 7.

455 *Id.* at Art. 5.

456 *Id.* at Art. 7(3).

of any class of revenues, such as inter-carrier compensation (*e.g.*, interconnection fees, roaming, wholesale revenues).[457]

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

Article 5 of the 2006 Decree provides that tariffs may include an extra charge to compensate for remote subscribers which are outside of the range foreseen in the licence, as well as for lines in rural areas which are not for community use.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There are no such provisions in the law.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There are no such provisions in the law.

5.3.1.6 Malawi

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

No UAS financing mechanism are defined in terms of the 1998 Malawi Communications Act. The 2002 Rural Telecommunications Policy calls for the establishment of a Rural Telecommunication Development Fund[458]. Pending legislation currently contain provisions establishing a Universal Service Fund[459].

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

The 1998 Malawi Communications Act contains no provision for criteria and mechanisms governing the funding of UAS. The 2002 Rural Telecommunications Policy calls for "obligatory contributions… administered in a transparent, non-discriminatory, and competitively neutral manner, and… imposed on all participants in the relevant market segment"[460]. Pending legislation currently contain provisions for subsidies to be provided "on a competitive basis to commercial operators and service providers"[461].

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457 *Id.* at Art. 7(2)(b).

458 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002.

459 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

460 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 9.

461 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The major sources of funding identified in the policy calling for the establishment of the USF, included: donors, government, telecomms operators, and the regulator itself[462]. Pending legislation currently contain provides for funding to be sourced from licensees, government appropriations, donors, surplus funds from the regulator, as well as, confusingly, least subsidy auctions and profits from UAS projects[463].

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There is no evidence of the use of cross subsidies, either explicit or implicit, to subsidise rollout.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There is no evidence of the implementation of any implicit funding mechanisms in the Malawi market.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

The 2002 Rural Telecommunications Policy calls for a relatively 'smart' funding approach where funds are used to subsidise start-up rather operating costs: "the Fund will contribute to the capital cost of local network equipment and of facilities such as telecentres [but] will not be used to subsidise operations"[464]. Pending legislation currently suggests a somewhat 'smart' approach in using subsidies for "incentives to provide Universal Access in areas which are uneconomic or only marginally viable"[465].

5.3.1.7 Mauritius

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The law provides for the establishment of a Universal Service Fund. No further provisions are made.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

The ICTA 2009 Country Report to CRASA provides that in practice it is expected that the amount of fund available will be limited and will have to be allocated among a number of competing worthy investments. As such a proper method of rationing are devised. According to ITU guidelines quantitative methods may be used to analyse the various choices, by comparing the long-term net present value of alternative

462 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 9.

463 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

464 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 9.

465 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

projects, incorporating social benefits. Competitive bidding is a methodology that can be used to determine funding allocation.

Under this the licensees are asked to bid for implementing each of the Universal Service. The licensee who bids for the lowest charges for implementing a Universal Service is asked to provide the Universal Service with the bid amount given from the USF.

Project proposals shall be evaluated according to the viability and completeness of their implementation plans which in many cases may be a vital factor in determining the success or failure of the project. The evaluation criteria that will be adopted will include basically the following seven elements:

- Location of proposed service,
- Quality of service,
- Quantity of service,
- Community benefits,
- Implementation plan,
- Cost, and
- Bidder qualifications.

The Report also provides that implementation plans to be included with project proposals should incorporate the following information:

- Business plans – three to five year budget projections, break-even analysis and market demand analysis are provided.
- Tariff and other pricing proposals – these should include interconnection agreements with other carriers.
- Management plan – these should detail the organisation of the project, the responsibility of personnel.
- Implementation schedule – specific dates and sequence of events, the timing of equipment installation and operation start-up dates are included.
- Publicity and community inclusion programmes – these should describe plans for inviting participation in the project from affected communities as well as gender awareness considerations and publicity and outreach plans to promote use and benefits of service.
- Monitoring and reporting plans – there are provisions for informing USF managers about progress in implementation, the public response to the services, lessons learnt, identified obstacles and possible improvements.

The Report further states that the cost of a project is defined in terms of the proposed subsidy amount requested from the USF to support its implementation. Additional costs beyond the subsidy amount should not be considered but are a factor in the evaluation of community benefits and the above referred implementation plan. For projects that are otherwise considered to be equivalent according to the other evaluation criteria, the proposal requesting the smallest amount of USF is usually awarded the concession. In case it is difficult to compare projects according to exactly equivalent characteristics, though the amount of subsidy requested remains the selection criterion, other factors may be included to ensure that the winning proposal is the one that provides the greatest net social and economic value.[466]

[466] ICTA – Mauritius Country Report to CRASA, April 2009.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

In accordance with the 2008 Universal service Fund Regulations, operators make monthly payments to meet the annual contribution obligation.

The USF Monthly Payment Form published by ICTA[467] provides that the breakdown of Monthly Instalment Payable into USF consists of:

A) 5% of Gross revenue from the provision of International Roaming Service during that month:

AND

Lesser of B(i) OR B(ii), where

B)(i) amounts to Rs 1.50 on every minute of incoming international calls which public operator terminates in Mauritius in that month

OR

B)(ii) amounts to 2.5% of annual revenue which public operator generates from the provision of telecommunication services

The computation of the surcharge in case of late payment consists of a surcharge of 1% of monthly instalment payable (A+B(i) or B(ii)) applicable for late payment

Information to be submitted as per USF Regulations of 2008 for each month consist of:

(i) Gross revenue generated by public operator from International Roaming Service (Rs)

(ii) Number of minutes of incoming international calls which the public operator terminates in Mauritius

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There are no such provisions in the law.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There are no such provisions in the law.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There are no such provisions in the law.

[467] USF Monthly payment Form available at :

5.3.1.8 Mozambique

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The law only provides for financing through a Fund.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

Article 40 of the law provides that INCM must select projects through public tenders and that the selection must be non-discriminatory.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

Article 13 of the Decree provides that sources of the Fund include operator contributions, government grants, interests from deposits, excess from previous years, and other funds which may be provided to the Fund. Operators pay up to 1% of gross revenues. Internet café providers are exempted.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There are no such provisions in the law.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There are no such provisions in the law.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There are no such provisions in the law.

5.3.1.9 Namibia

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The 2009 Communications Act establishes only a "universal service fund" as an explicit vehicle to fund UAS[468].

[468] Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 56.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

There are no specific provisions under the 2009 Communications Act setting out the principles governing expenditure of funds.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The 2009 Communications Act authorises the regulator to "impose a universal service levy", after have followed a public regulatory process[469]. The regulator has discretion as to whether the levy will be based on a percentage of income or a percentage of profit or a fixed fee or a unit charge, as well as regards the frequency and means of payment[470].

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There is no evidence of explicit inter-service cross subsidies, nor are they provided for under the 2009 Communications Act, except for a rather unclear provision allowing for the "sharing of costs between customers in urban and rural areas".[471]

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

The 2009 Communications Act does provide for the regulator to order an operator to "provide a specified form of universal service in a specified area", and may allow for this to be compensated for from the USF, which claim may be subject to a cost calculation formula to be regulated[472].

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There is no consideration of smart subsidies per se in the 2009 Communications Act which provides for subsidies in general in requiring that the fund be used to "subsidise the provision of services or the provision of infrastructure"[473].

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469 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 56 (2).

470 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 23.

471 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 52 (20) (b).

472 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 57.

473 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 56 (3) (b).

5.3.1.10 Seychelles

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The law provides for the establishment of a Fund. No further mechanisms are provided for.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

The law provides for the establishment of a Fund. No further mechanisms are provided for.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

Section 28 of the Act provides that every holder of a telecommunication service licence shall pay a contribution to the Fund at such rate and at such times as may be prescribed.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There are no such provisions in the Act.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There are no such provisions in the Act.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There are no such provisions in the Act.

5.3.1.11 South Africa

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The 2006 Electronic Communications Act establishes the Universal Access and Service Fund as the sole financial mechanism (replacing the previous Universal Service Fund) to support UAS.[474]

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

There are no specific provisions in terms of the 2006 Electronic Communications Act requiring UAS financial support interventions to be targeted and competitively neutral.

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[474] RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 87.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The sole source of USF funding is a levy on operator turnover. The 2006 Electronic Communications Act requires the regulator to determine "the prescribed annual contributions of the licensee's licensed activity to the Universal Access and Service Fund" along with the "the basis and manner of determination of such contributions, which must not exceed 1 per cent of the licensee's annual turnover".[475] Broadcast licensees may offset their contributions to a separate fund designed to support the provision of local content against their USF levy.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There is no provision in terms of the 2006 Electronic Communications Act enabling cross-subsidisation for the purposes of supporting UAS, nor do any such cross-subsidies appear to be in effect.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

The 2006 Electronic Communications Act provides for the setting of an e-rate in terms of which "Internet services, provided to all public schools... and all public further education and training institutions... must be provided at a minimum discounted rate of 50% off the total charge levied by the licensee providing Internet services to such institutions".[476].

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There is no specific provision for smart subsidies in the 2006 Electronic Communications Act.

5.3.1.12 Swaziland

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

Sections 35-37 of the Electronic Communications Bill provide that in designating a licensee, the procedure adopted shall ensure that the universal service obligations are provided in a cost-effective manner. The Commission shall estimate the cost of achieving these objectives, update its cost estimates annually and report its findings to the Minister. The Commission shall consider any request made by a designated licensee to receive funding for the net costs of meeting the obligation for which he is designated. In each such case the Commission shall determine whether the provision of the service by the designated licensee making the request is imposing an unfair burden on such licensee, and shall accordingly amend or retain the licensee's obligations.

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475 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 89.

476 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 73.

The Bill also provides for the possible establishment of a donor-supported Rural Access Fund (RAF), to provide grant support to co-fund priority investments increasing the access of the rural population to basic infrastructure services, such as electricity and electronic communications.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

Section 33 of the Bill provides that the Commission shall determine the most efficient and appropriate approach for ensuring the implementation of universal service. Section 36 provides that the Commission shall estimate the cost of achieving these objectives, update its cost estimates annually and report its findings to the Minister. The Bill also provides that the Commission shall consider any request made by a designated licensee to receive funding for the net costs of meeting the obligation for which he is designated. In each such case the Commission shall determine whether the provision of the service by the designated licensee making the request is imposing an unfair burden on such licensee, and shall accordingly amend or retain the licensee's obligations.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

Section 36 provides that the Commission may make it a condition of a grant of a licence that every provider of public electronic communications services shall contribute to a universal access fund. The Bill also provides for the possible establishment of a donor-supported Rural Access Fund (RAF), to provide grant support to co-fund priority investments increasing the access of the rural population to basic infrastructure services, such as electricity and electronic communications.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There are no such provisions in the Bill.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There are no such provisions in the Bill.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There are no such provisions in the Bill.

5.3.1.13 United Republic of Tanzania

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The 2006 Universal Communications Service Access Act establishes the USF as the primary financial mechanism to support UAS, both through subsidising USOs and through support for UAS projects.

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

Much of the funding via the USF is directed at 'universal service providers' to support and subsidise their delivery on USOs, Project proposals to meet USOs are required to satisfy a number of criteria as "appropriate" and "adequate" interventions[477] before they receive the approval of the USF.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The 2006 Universal Communications Service Access Act identifies the following as key sources of funding to support UAS interventions: "funds as may be appropriated by the Parliament...; sums of money allocated by way of subventions by the [regulator]; universal service levy [imposed on] holders of communication licences; grants, donations, bequests or other contributions".[478] The "manner and percentage by which a holder of a communications licence shall pay universal service levy"[479] is subject to and effected by regulation issued by the Minister.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

To support USOs the USF is required to "set up schemes for price caps or geographical averaging or other similar schemes for some of all specific services",[480] which would imply a degree of cross-subsidisation.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

Some degree of implicit funding underlies the requirement that universal services providers " take into account the progressive adjustment of tariffs towards costs in order to maintain the affordability of services for users in rural or under-served areas and for vulnerable groups of users such as the elderly, those with disabilities or those with special social needs".[481] No other forms of implicit funding are set out in the law.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There is no explicit provision for smart subsidies in the 2006 Universal Communications Service Access Act.

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477 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 17 (7).

478 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 23 (1).

479 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 23 (2).

480 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 13 (8).

481 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 13 (7).

5.3.1.14 Zambia

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The 2009 ICT Act only provides for the establishment of a USF as a financial mechanism to support UAS[482].

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

The 2009 ICT Act does not lay down any funding criteria or principles, but provides for the regulator to recommend to the Minister a set of regulations governing the "nature and status" of the Universal Access and Service Fund, including "activities that the Fund shall finance and the manner in which such financing shall occur"[483]. There is no evidence that these regulations have been drafted or promulgated.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

The 2009 ICT Act does not specify sources of funding for the USF. Again the regulator may recommend to the Minister a set of regulations, specifying, inter alia, "sources of funding and the manner in which the Fund will be paid"[484]. There is no evidence that these regulations have been drafted or promulgated.

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There is no evidence of cross-subsidisation via tariff setting. The 2009 ICT Act in fact specifies "cross subsidies [in tariffs] shall be eliminated"[485].

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There is no evidence of any implicit UAS funding mechanisms, nor are these provided for in terms of the 2009 ICT Act.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

The 2009 ICT Act does not specify how expenditure from the USF should take place. The regulations that the regulator may recommend to the Minister may specify such an approach in relation to the "activities

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482 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 70.

483 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 70 (4).

484 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 70 (4).

485 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 47 (2) (b).

that the Fund shall finance and the manner in which such financing shall occur"[486]. There is no evidence that these regulations have been drafted or promulgated.

5.3.1.15 Zimbabwe

Range of Mechanisms: ***The law establishes a variety of financial mechanisms to support provision of UAS.***

The 2000 Postal and Telecommunications Act provides solely for the establishment of a USF as a financial support mechanism towards UAS[487].

Funding Criteria: ***The law provides that funding or subsidies provided must be targeted and determined and delivered in a manner that is transparent, non-discriminatory, inexpensive, and competitively neutral.***

There are no such funding criteria specified in the 2000 Postal and Telecommunications Act.

Source of Funds: ***The law establishes a clear and explicit funding arrangement for UAS sourced from sector revenues / government budget / etc with subsidy payments into the Fund at reasonable intervals (eg annually or quarterly)***

Contributions to the USF include not only a "prescribed annual contribution" from licensees, but also possibly "moneys appropriated by Act of Parliament", surplus "moneys... the funds of the Authority' and "other moneys [such as fines imposed on licensees] to which the Fund may be lawfully entitled"[488].

Cross subsidies: ***Is there rate setting above cost on some services to provide "support" for UAS services? If so, which services have above-cost rates? Which services or infrastructure receive the support from these above-cost revenues?***

There is no evidence of cross subsidies to support UAS, either by means of tariff setting or any other mechanism.

Implicit Funding: ***Does the financing of UAS assume implicit (hidden) funding through fees and other indirect sources? Are there other sources of implicit funding such as inter-carrier compensation fees / access deficit charges Is any use made of discounted tariffs for people with disabilities, and educational and health institutions?***

There are no provisions for implicit funding arrangements in support of UAS.

Smart Subsidies: ***Where government decides to fund operators through UAS programmes, are the subsidies 'smart subsidies' to encourage operators to enter the market rather than to create an unending dependency on the USF***

There is no requirement ensuring the provision of smart subsidies within the 2000 Postal and Telecommunications Act.

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[486] Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 70 (4).

[487] Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Sections 73 – 79.

[488] Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Sections 75 & 76.

5.4 International Case Studies

5.4.1 ECOWAS

To assist national regulatory authorities in determining whether provision of the universal service places an unjustified burden on the companies designated as providers, the ECOWAS Supplementary Act on Universal service establishes that Member States shall undertake to provide for the adoption of a method for calculating the costs of the universal service, based on net costs. The net cost corresponds to the difference between the investment and operational costs associated with provision of the universal service and the relevant revenues. Relevant revenues are the direct and indirect revenues generated by the universal service.

The net cost of any special price-scheme offers made by an operator to certain categories of subscribers to ensure their access to the universal service shall be deducted from that operator's contribution to the universal service fund. The calculation of the net cost of the universal service obligations shall be submitted for auditing by an entity that is unconnected with the body responsible for managing the fund. The result of the net cost calculation and the audit conclusions shall be made publicly available.[489]

The Act also provides that funding and subsidies must be targeted, and are to be determined and delivered in a manner that is transparent, non-discriminatory, inexpensive and competitively neutral.

Furthermore, the Act states that subsidies can be provided using several means, including:

- A universal service fund, which are developed as a mechanism within a broader market-oriented approach to achieving universal access;
- Universal service funds can be financed by a broad range of market players, managed by neutral bodies such as regulators, and be used to kick-start public access projects that meet the needs of the local community.

Governments may also consider a full range of other financing mechanisms – competitive minimum subsidy auctions could be used, as an option, to reduce the amount of financing necessary for public access projects financed by a universal service fund; public access projects can be designed to achieve long-term financial self sustainability, especially where consideration is given to innovative low-cost technologies.[490]

5.4.2 EU

Article 13(1) of the 2002 Universal Service Directive sets out the conditions under which a financing mechanism for the USO comes into play and identifies two types of financing mechanisms that may be introduced by Member States:

"Where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from a designated undertaking, decide:
(a) to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds; or
(b) to share the net cost of universal service obligations between providers of electronic communications networks and services".

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489 ECOWAS Supplementary Act A/SA.6/01/07 on Universal Access/Service at Art. 19.

490 *Id.* at Art. 20.

Three conditions have to be met to lead to the setting up of a financing mechanism under Article 13(1) of the Directive, namely:

- A finding of an unfair burden by the NRA, based on a net cost calculation carried out in accordance with Article 12 of the Directive;
- A request for a designated USP;
- A decision of the NRA to launch a the financing mechanism.

In case of the option presented under Article 13(1) (b) of the Directive, a sharing mechanism (which may include a Universal Service Fund) has to be set up. Where such a mechanism is introduced, the following principles apply:

- ***Independent administration*** – The sharing mechanism must be administered by the NRA or by a body independent from the beneficiaries under the supervision of the NRA. The independent body administering the fund is to be responsible for collecting contributions and oversee the transfer of sums due or administrative payments to the undertakings entitled to receive payments from the fund. One must seek to minimise the administrative burden and the resulting costs involved by the administration of such mechanism; therefore, the NRA/independent body may act as an "auditor" and "clearing house" for payments or may simply oversee payments directly between the organisations concerned.
- ***Transparency*** – NRAs must ensure that the principles for cost sharing, and details of the mechanism used, are publicly available. Subject to Community and national rules on business confidentiality, NRAs have to ensure that an annual report is published giving the calculated cost of USO, identifying the contributions made by all the undertakings involved and identifying any market benefits that may have accrued to the USP(s), where a fund is actually in place and working.
- ***Least market distortion*** – The imposition and collection of contributions must not hinder competition or market entry beyond what is required to ensure that the undertaking(s) delivering universal service get(s) reimbursed for the net cost. This principle can also be seen as an expression of the proportionality principle. In line with it, Member States may choose not to require contributions from undertakings whose national turnover is less than a set limit.
- ***Proportionality*** – The imposition and collection of contributions must be proportional to the objectives of the financing mechanism, but also to the situation of undertakings subject to contribution. In accordance with Article 13(3), a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.
- ***Non-discrimination*** – Without prejudice to the possibility to exempt undertakings of smaller size from participating in the sharing mechanism, the imposition and collection of contributions must not unduly discriminate among undertakings. The principle of non-discrimination and the proportionality principle find a common reflection in the practice to impose contributions in proportion to undertakings" turnover.
- ***Unbundling of contributions*** – Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking.
- ***Territoriality*** – Contributions shall not be imposed on or collected from undertakings that are not providing services in the territory of the Member State that has established the sharing mechanism.

However, only the net cost (as per Article 12) of the obligations laid down in Articles 3 to 10 of the Universal Service Directive may be financed using a sharing mechanism. The option under Article 13(1) (a) of the Directive, which is the compensation from public funds may, however, also be used to finance

other obligations (e.g. provision of communication services outside the scope of universal service to schools, hospitals or libraries etc.).

Guidelines for the design and operation of the mechanisms for USO financing, as well as for the determination of who contributes and the calculation of the level of contributions were first established in the EC 1996 Communication..

5.4.3 Peru

Peru has used various financial and regulatory techniques to promote universal access and service since the privatization of the telecommunications market. These techniques have included: the Peruvian Universal Access and Service Investment Fund in Telecommunications (FITEL), the imposition of Universal Access and Service Obligations, regulatory measures, and market-based incentives (called "free-will" provision of service). These mechanisms now coexist and have each made significant contributions to the expansion of telecommunications services in Peru.

The Universal Service Policy[491] promotes the availability of "essential" public telecommunications services, which are defined as including voice and data services which shall be available to most Peruvians. Examples of services included under this definition are fixed telephony, mobile services, long distance services, local carrier services, and Internet access.[492]

Under the terms of the Universal Service Policy, the Peruvian government, through the Ministry of Transportation and Communications ("Ministry") and the regulator, Organismo Supervisor de Inversión Privada en Telecomunicaciones (OSIPTEL), are mandated to:

- Promote the deployment of broadband telecommunications networks/services prioritizing the expansion to unserved districts;
- Encourage training in information and communication technologies;
- Encourage private-public investments and partnerships for the development of telecommunications services, particularly in rural areas and places of preferential social interest; and
- Enhance coordination with local and regional governments to boost opportunities for community development and inclusion in the information society.[493]

The Universal Service Policy also defines the rural areas where support is to be granted, which include towns that meet at least one of the following criteria:

- Towns which are not defined as Urban Areas by the Institute of Statistics and Informatics (INEI);
- Towns which are either a district capital or a small town with 3,000 or less inhabitants (the definition was updated and this category included after authorities realized that many of these small towns, as well as some district/provincial towns, considered urban by INEI, received no telecommunications services);[494]
- Towns which have a teledensity of less than two subscriber lines per 100 inhabitants; and
- Towns which are district/provincial capitals lacking at least one essential telecommunications service.[495]

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491 Bill 28900 (Nov. 3, 2006); Supreme Decree 003-2007-MTC (Feb. 2, 2007).

492 *Id*.

493 It is interesting that the USP does not establish who will be the main coordinator with local and regional governments.

494 Notification of the BOD No. 048-2000-CD/OSIPTEL (Sept. 28, 2000) (superseded by Supreme Decree No. 010-2007-MTC (April 2, 2007)).

495 Approved by Supreme Decree No. 010-2007-MTC (Apr. 2, 2007).

The policy also focuses on "places of preferential social interest" (PPSI), defined through a Ministry Resolution as areas of special interest with respect to issues such as national security (*e.g.*, towns located on the border) or social integration (*e.g.*, women, handicapped users). PPSI can also be those *urban* areas that are designated "poor, very poor, or extremely poor" by the Social Development Cooperation Fund (FONCODES per its abbreviation in Spanish) that also meet one of the following criteria:

- Lack of some public telecommunications service infrastructure;
- Do not have payphones or have less fewer than one payphone per 500 inhabitants; or
- Are of interest to the Ministry due to national security or other public interest reasons.[496]

In addition to the USP, Peruvian authorities have imposed universal service and access obligations throughout the privatization process and economic policy of government which imposes such obligations in case of mergers.. For example:

- In 1994, when the two government owned telecommunications companies, the Peruvian Telephony Company (CPT, which operated in Lima) and the National Telecommunications Enterprise (ENTEL, which operated in the rest of the country) were privatized, Telefonica won the tender to purchase the entities and then merged them.[497] One of the conditions of the tender was that Telefonica was required to install public payphones in 1,525 rural villages by 1999, a task it accomplished by 1998 when the telecommunications market was finally opened to competition.[498]
- In 2004, the Telefonica Group acquired Bell South Latin America. Peruvian authorities conditioned merger approval on the obligation to install mobile services in 2,000 unserved or underserved areas by 2008 and to return, to the Peruvian Government, spectrum formerly licensed to Bells South in the 800 MHz frequency band.[499]
- In 2006, Telefonica Móviles and América Móviles accepted the obligation to expand mobile services during a five-year period to 236 districts without residential telephony[500] in exchange for a reduction of their spectrum fees.[501]

Telecommunications service providers have also identified market opportunities and invested in the provision of universal access and service. Examples of this include the more than 2,000 extra payphones installed by Telefonica in rural areas[502] and the payphones installed by Rural Telecom S.A.C. beyond its FITEL obligations.[503]

The Ministry and OSIPTEL have actively used regulatory reform to promote more efficient access to communications, and have thus issued numerous policies and regulations to encourage the expansion of telecommunications services to unserved and underserved areas, including:

- Tariff System for Rural Services,[504] which regulates tariffs for public payphones in rural areas;

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496 RM No. 535-2006-MTC/03.

497 Contract approved by Supreme Decree No. 11-94-TCC (May 13, 1994).

498 Telefonica operated under a monopoly for local, domestic, and international fixed telephony from 1994 until 1998 (limited concurrency period – LCP). It is important to note that this monopoly ended one year earlier than planned through an agreement between Telefonica and the Peruvian authorities. During LCP mobile and local carrier services operated under competition. The Peruvian market is now open to competition for all telecommunications services.

499 Addendum to Telefonica's Mobile Services Licensing Contract.

500 These obligations do not include obligations related to the Telefonica Moviles and BellSouth merger.

501 Supreme Decree No. 043-2006-MTC (Dec. 28, 2006); RM No. 049-2007-MTC/03 (Jan. 27, 2007).

502 This number does not include the original USO (1,525 payphones).

503 FITEL compilation of data from telecommunications companies.

504 Notification of the BOD No. 022-99-CD/OSIPTEL (Sept. 22, 1999).

- FITEL Regulations,[505] which regulate the procedural aspects of FITEL funding of telecommunications projects, and establish the responsibilities of the fund's Board of Directors and the Technical Secretariat;
- Policy Outline to Promote Wider Access to Telecommunications Services in Rural Areas and Places of Preferential Social Services,[506] which defines rural access policies regarding: infrastructure sharing, signalling, spectrum, numbering, fees, interconnection, tariffs, micro-telecommunications companies, and gender policies;
- Mobile Service Spectrum Use Rules,[507] which include a pay-or-play option for mobile service providers for the expansion of mobile services to 250 unserved districts in a period of five years;[508]
- Customs Tax Exemption[509] for the import of telephones, including mobile cell phones, other types of wireless networks terminals, other terminal equipment for transmitting/receiving voice, images or other type of data within a network, and wired or wireless terminal equipment for local or wide area networks;
- 2007 Bill to Expand Telecommunications Infrastructure[510] and its Rules,[511] which obligate highway and electric infrastructure licensees to facilitate the use of their infrastructure by telecommunications service providers.
- 2008 Bill for Access to Telecommunications Infrastructure Owned by Main Telecommunications Service Providers,[512] which requires such providers to share their infrastructure with other telecommunications companies, promotes co-location and encourages competition.

In June 2, 2008 the Ministry also issued a public consultation that compiles existing universal access and service regulations in a single document and proposes several changes to further promote rural development.[513] The main changes included:

- Rural Operator: Borrows the definition of rural operator introduced in the Peru-U.S. free trade agreement, which defines a rural operator as a telecommunications service provider with at least 80 percent of its fixed lines in rural areas.
- Rural Area: Withdraws the current limitation for rural areas, which states that no more than 10 percent of fixed lines in Peru will be within rural areas.
- Places of Preferential Social Interest: Redefines this concept by including *all towns* considered "poor, very poor or extremely poor" by FONCODES that also comply with one of the following criteria: are located within the Peruvian border, lack public payphones, have less than one payphone per 500 inhabitants, lack at least one essential public telecommunications service, or are of interest to the Ministry.
- Telecommunications Licences: For companies with most of their coverage in rural areas, reduces the timeframe to obtain licences from 50 to 30 working days.

505 Notification of the BOD No. 048-2000-CD/OSIPTEL (Sept. 28, 2000) (superseded by Supreme Decree No. 010-2007-MTC (April 2, 2007)).
506 Supreme Decree 049-2003-MTC (Aug. 17, 2003).
507 Supreme Decree 043-2006-MTC (Dec. 28, 2006); RM 049-2007-MTC/03 (Jan. 1, 2007).
508 In practice, only two out of the three mobile service providers accepted this option.
509 Supreme Decree Nº 017-2007-EF (Feb. 15, 2007).
510 Bill 29022 (May 20, 2007).
511 Supreme Decree 039-2007-MTC (Nov. 13, 2007).
512 Legislative Decree No. 1019 (June 10, 2008).
513 Norma que Aprueba el Marco Normativo General para la Promoción del Desarrollo de las Telecomunicaciones en Areas Rurales y Lugares de Preferente Interés Social (Public Consultation) (June 2008).

- Frequency Bands: Releases the limit for equivalent isotropically radiated power (EIRP) in unlicensed frequency bands 902-928 MHz, 2400-2483.5 MHz, 5725-5850 MHz, 5250-5350 MHz and 5470-5725 MHz while maintaining the power constraint for transmitters (24 dBm for the last two bands and 30 dBm for the rest).
- Interconnection: Rural operators would be able to interconnect in any technically available local exchange using any kind of subscriber lines (fraction E1s, primary rate interface (PRI), regular fixed lines, etc.). Interconnection fees for rural operators would be asymmetric. As requested by rural operators, telecommunications service providers would have to provide information regarding the capacity usage of their exchanges.
- Resale Restrictions: Withdraws the obligation for rural operators to resell traffic through dealers.
- Commercial Service Exploitation Fee: Temporarily reduces this fee from 0.5 percent of annual gross income to 0.1 percent of the Standard Tax Unit (known in Spanish as UIT)[514] in exchange for the expansion of fixed telephony lines or mobile services to 225 districts without voice services.[515]
- Spectrum Management Fee: In rural areas and places of preferential social interest, the fee is temporarily reduced to one percent of the originally-estimated fee for radio frequency sites.
- Emergency Calls: Withdraws the obligation for rural operators to provide emergency calls. It is important to note that even though telecommunications service providers currently provide a number for emergency calls in rural areas, emergency infrastructure (*e.g.*, police, fire fighters, ambulance services) is not necessarily in place.
- Ionic Radiation Studies: Companies will not be required to conduct radio frequency studies for rural sites. The Ministry, however, will ensure that radio frequency emissions in these areas comply with established limits.

5.4.4 Morocco

The main components of the universal service financing framework in Morocco include the following aspects:

- A universal service fund, "Fonds du service universel des télécommunications" (FSUT), which was created in 2005 to fund universal service projects selected by the CGSUT,
- Introduction in 2004 of a new “pay or play” approach to operators’ contributions to the universal service mission.
- An inter-ministerial committee, the “Comité de Gestion du Service Universel de Télécommunications (CGSUT),” designs and selects national universal service projects.

Under the “pay or play” option, telecommunications network operators may either pay an annual contribution of two percent of revenues net of taxes and interconnection costs or carry out CGSUT-approved universal service projects.

IAM and Meditel immediately chose to fulfil their universal service obligations through the “play” option. According to the ANRT this approach has been successful.

In terms of projects chosen, there has been the Initiative Nationale de Développement Humain (INDH), public rural telephony, the creation of community ICT centres and the expansion of broadband networks.

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514 1 UIT = PEN 3,500 = US$1,197 (June 23, 2008).

515 There is likely a mistake in the consultation document. The correct figure is either 0.1 percent UIT per base station or 0.1 percent annual gross income. The Ministry has not yet clarified this point.

Since 2005, numerous universal service projects were suggested by the existing operators and approved. These projects included providing 1,556 rural villages with telecommunications services (voice and Internet access) and received 600 million Dirham from the FUST in subsidies. The "GENIE" Programme, described above, also received a one billion Dirham subsidy.

Despite the wide coverage of the GSM network, numerous villages were still considered to be insufficiently covered. This prompted the government to establish the "PACT" programme described above to provide these villages with telecommunications service. This programme is expected to be carried out during the 2008-2011 period.

The general telecommunications law also requires operators of public networks to also pay annual contributions for training, standardization and research. The fee for training and standardization is 0.75 percent of the operator's annual revenues net of interconnection costs for licensed services, and the research fees are 0.25 percent of the same revenues.

The FUST is funded through telecommunications operator contributions of up to two percent of their revenues net of taxes and interconnection fees unless they opt for the "pay or play" option. The FUST may also receive other contributions in the form of donations.[516]

Finally, tariffs for telecommunications services in Morocco must treat users equally and may not discriminate based on geographic location. (They may include additional charges for exceptional connection difficulties.)[517]

5.4.5 Uganda

The Uganda Communications Act of 1997 states that one of its prime objectives is to develop a modern communications sector and infrastructure, including by enhancing national coverage of communications services and products, with emphasis on provision of communications services. Within this context, the Act also seeks to encourage the participation of private investors in the development of the sector as well as to introduce, encourage and enable competition in the sector through regulation and by licensing competitive operators to achieve rapid network expansion. In addition, the Act seeks to create a framework which will allow for the minimization of all direct and indirect subsidies paid by Government to the communications sector and for communications services, amongst others through the establishment and administration of a fund for rural communications development.[518]

The Communications (Universal Service) Regulations (the 2005 Regulations) outline a comprehensive universal service policy for Uganda and mandate the Uganda Communications Commission (UCC) to support the provision of universal service obligations by the operators, [519] and that the UCC shall implement the universal service obligations through the Rural Communications Development Fund (RCDF) established under the Communications (Establishment and Management of the Rural Communications Development Fund) Instrument, 2002.[520] In addition, the UCC's 2001 Rural Communications Development Policy for Uganda (the 2001 Policy) also provided that the RCDF would be the main tool for rural communication development to ensure that basic communications services of acceptable quality are

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516 Fiche Synthétique sur le Service Universel (undated).

517 Decree No. 2-97-1026 (Feb. 25, 1998) on the General Conditions for the Exploitation of Public Telecommunications Networks, as amended by Decree No. 2-05- 771 (July 13, 2005), available at www.anrt.net.ma/fr/admin/download/upload/file_fr232.pdf

518 Uganda Communications Act 1997, Section 2.

519 *Id.* at Art. 10.

520 The Communications (Universal Service) Regulations of 2005, Article 4; Rural Communications Development Policy for Uganda, the Uganda Communications Commission, July 2001

accessible at affordable prices and at reasonable distances for all people of Uganda.[521] The aim of the RCDF is to encourage commercial suppliers to enter the market as well as to achieve rural communications sustainability and not to create dependence on subsidies.[522]

The 2001 Policy defined the general principles governing the fund and determined that the RCDF Fund would be used to assist areas where provision of commercial services is not feasible, and to provide basic (universal) access.

Within this context, the 2001 Policy also determined that:

- a RCDF Fund should primarily be accessed through some form of competition between operators;
- contributions to the Fund are made by service operators;
- the RCDF Fund are limited in scope compared to needs, and should therefore only be used to leverage investment rather than provide all solutions.[523]

Furthermore, the 2001 Policy provides that the RCDF shall be used to establish basic communications access through subsidies. In addition to the financing of projects granted under the 2001 Policy, the provision of universal service obligations carried out by designated universal service operators may also be financed through the RCDF.[524] The 2005 Regulations define the general principles for the designation of universal service areas and universal service providers, as well as the principles for calculating the cost of universal service obligations.[525] The 2005 Regulations provide that the UCC can designate an operator as a universal service provider who would then have an obligation to provide universal services on a nation-wide basis or in a specified universal service area.[526] UCC determines subsidies for each universal service area with respect to each service obligation.[527] The 2005 Regulations call for a separate determination to specify the amount or method for working out the amount of the subsidy as well as the circumstances under which universal service providers become eligible for subsidies.[528]

In addition, the 2005 Universal Service Regulations also provide that in fulfilling the universal service obligation, operators shall take into account the progressive adjustment of tariffs towards costs in order to maintain the affordability of services for users in rural or high cost areas and for vulnerable groups of users such as the elderly, those with disabilities or those with special social needs.

The Commission shall in the promotion of universal service obligation set up schemes for price caps or geographical averaging or other similar schemes for some of all specified services.

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521 Rural Communications Development Policy for Uganda, the Uganda Communications Commission, July 2001, sections 1.4.4. and 3.3.

522 *Id.* at section 3.3.

523 *Id.* at section 1.4.4.

524 The Communications (Universal Service) Regulations of 2005, Article 10.

525 *Id.* at Schedule 1.

526 *Id.* at Art. 7.

527 *Id.* at Art. 14.

528 *Id.* at Art. 14.

6 Universal Service Fund

6.1 Background

The 2002 SADC UAS policy guidelines provide for the following in relation to the USF:
6.1 There are several methods of funding Universal access and service, one of which is Universal Service Fund (USF). The purpose of the universal service fund is to be an ancillary tool for funding development of the information and communications sector in underserved areas;
6.2 Telecommunications operators will contribute a percentage of their revenues to a universal service fund;
6.3 The universal service fund financial activity are made publicly available on the website and/or by written request of any citizen;
6.4 The universal service fund are audited twice per year, and each audit is to be made immediately available to the public;
6.5 The regulatory agency are responsible for the effective management of the universal service fund;
6.6 The universal service fund should make use of alternative and collateral funding, or small venture capital in order to maximise available financial resources;
6.7 The promotion of public access points such as telecentres, SMMEs and cooperative entrepreneurial organisations that want to implement projects in rural and remote areas are given priority to the use of the universal service fund;
6.8 The use of competitive bidding as a method for granting funds from the universal service fund to any operator are prioritised.

6.1.1 Establishment of Fund

A further mechanism used to help achieve the goal of universal access and service is the creation of universal service funds. These funds are being used increasingly in competitive markets to supplement market-based policies, and address access gaps and market failures in remote and under-served locations.

Although many governments have seen the establishment of such funds as the most efficient way of financing universal access and service, setting up a fund properly is not an easy task. Most important is to make sure that the WTO requirements of transparency and fairness are implemented, as well as the requirement that the revenues collected are used for development of the telecommunication sector only.

The WSIS Task Force on Financial mechanisms for ICT for Development (ICT4D) which investigated the scope and adequacy of existing financial mechanisms for ICT4D found that national universal service funds can play an important role in lowering the costs of delivery of services to identified target areas, but may require substantial institutional and implementation capacity to succeed. However, there are some legitimate and understandable concerns regarding UASFs, fuelled mostly by a few unfortunate examples. Also, there have been concerns raised over the complexity of establishing and managing a UASF. Negotiating fair UAS contributions for all operators, which are equitable between all and accepted as fair, is not necessarily an easy feat.

Brazil is an example of a country which has struggled with its Fund. Although established in August 2000, the FUST has been unable to achieve its goals. FUST was first established with the purpose of creating a financial resource that could complement the deployment of universal obligations of the fixed line operators, but in reality the cost of expanding services is being borne directly by the operators. FUST's most critical challenge is that it is not technologically neutral. It favours fixed service operators over other telecommunications providers as the funds can only be applied towards fixed service projects. However, all telecommunications service providers are required to contribute thus indicating favouritism of one service over another. Acknowledging that this is not the best approach for a funding mechanism, the Ministry of Communications, in its recent public consultation on Reforming the Brazilian

Telecommunications Framework, called attention to this fact and proposed that the FUST are, at the very least, technologically neutral in its distribution mechanism. In addition, the Ministry is also considering a variety of other ways to distribute funds and to determine appropriate projects. As operators have continued to build out their networks according to their roll-out obligations, the government has collected a significant amount of FUST funds, but has only implemented one project and has no clear strategy on how to use the rest of the funds, which amount to seven billion Reais (US$ 4.31 billion).

6.1.2 Management of Fund

One of the main questions dominating the transparent and effective management of Universal Service Funds relates to the entity or authority which will have responsibility for managing its operations, and the definition of its structure and mandate.

There are two basic options to resolve this issue. Some countries have opted to make the NRA responsible for the administration of the Fund, whereas others have created independent third-party agencies dedicated to this function.

Those in support of housing the UAS Agency with the regulator argue that the technical expertise and market information that lies with that entity make it the most efficient entity in which to house UAS. Also, most regulators strive to achieve independence and effectiveness, which in turn benefits UAS should it be housed with them. Specifically since the NRA generally collects market information and deals with spectrum, tariffs, interconnection and licensing, and increasingly also with quality of service and consumer policy issues – all regulatory policy areas that will be important in addressing universal service and in particular the market efficiency gap, it makes most sense to also house UAS within this agency. However, there is also a fairly strong consensus among a majority of countries implementing such policies that where the USF fund administration comes under the control of the NRA, it must be separate from the incumbent operator but under the direction of the regulator.

Notwithstanding the above, it has been argued that in circumstances, where universal access and service is a more urgent priority on the national agenda (for example through broadband plans or e-government, ICT4D, ICT4E or other such plans), a separate agency could be established to address universal access and service either from a policy or administrative perspective.

In terms of transparency of the management of UAS, key elements also include:

- Accounting transparency;
- Independent auditing, publication and annual reporting;
- Keeping administrative costs to a minimum; and
- Efficient use of funds.

The ECTEL 2008 Universal Service Guidelines clearly provided for such management principles by stating:

“3.1 The Fund shall be managed by the Commission, in accordance with the Regulations and these Guidelines.

In the administration of the Fund the Commission shall ensure that:

- the Fund remains fiscally sound, and confirm revenue, cost, and financial performance projections;
- the collection of Fund Contributions from telecommunications providers in accordance with the Telecommunications (Universal Service Fund) Order;
- timely disbursement of subsidy and other eligible payments as per service contracts and the Fund’s certifications according to payment milestones;

- The Fund's financial accounts and records are maintained;
- The Fund's Annual Report is prepared.

3.2(ii) The finances of the Fund shall at all times be kept in separate accounts from other Commission's finances, and shall be transparently maintained and operated as such. All monies accruing to the Fund shall be kept in a specially designated Fund Bank Account, separate and independent from any other bank accounts of the Commission. There shall be no commingling of Fund finances and any other finances at any time. The Fund Bank Account shall be managed in accordance with financial management policies and procedures approved by the Commission. The Commission shall specify the authorised signatories to the Fund Bank Account."[529]

Within the context of accounting transparency, a key element is that the accounts of the UASF be separate from other regulator activities – most countries have implemented this by ensuring that the UASF has 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 therefore has 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.

The finances of the UASF should also be audited annually by an independent accounting firm and the report are 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 set-backs, receipts and disbursements are prepared, and made public.

Dedicated staff are competent but kept to a minimum. While the actual percentage of administrative overhead cost may vary from country to country, based on the size of the funds and in-country costs, it is important that this number is monitored and a ceiling is set, for example not to exceed 2-3 per cent of the total amount held by the fund per annum. Typically, a UASF's legitimate administrative and operational expenses are spelled out in the operating manual, administrative rules or regulatory procedure describing the administration of the fund.

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.

Careful management as well as effective subsidy estimation and market mechanisms in the distribution of funds can combine to ensure that the required levy is kept to a minimum and funds are not wasted, either through inefficient administration and management or in the market place.

Whatever the option chosen, the main issues of importance in relation to the establishment and management of the Fund include:

- The entity or government body charged with day to day management of the fund is independent and works according to transparent procedures.
- There is an oversight entity/body, or requirement for the fund manager to report to the regulator or ministry.
- There are financial transparency for the USF, including accounting separation and standards.
- Administrative costs of the fund are kept to a minimum.

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529 ECTEL Telecommunications Universal Service Guidelines of 2008, Section 3

6.1.5 Accessibility of Fund

Mechanisms need to be put in place to make universal service funds accessible to a wider range of telecommunications service providers. Limiting access of funds only to a specific category of licensee or to licensed operators, for example, can create barriers that continue to support existing conditions (i.e., the expansion of wireline networks to provide universal service and access) and discourage the implementation of new technologies to provide service in unserved or underserved areas. In Peru, telecommunications services providers with concession contracts for final public services (fixed line, including pay phones, and mobile) and value added services (data services including broadband Internet access) can access FITEL funds. If the entity/company requesting the funds does not have a concession contract for the area for which it is requesting the funds, the entity/company needs to request the appropriate expansion of the concession contract from the Ministry of Transportation and Communications.[530] Letting a variety of entities have access to universal service funds allows countries to benefit from a greater number of possible resources to help it achieve its universal service goals. In addition, these resources can sometimes provide innovative solutions for small-scale projects that would not normally be considered profitable.

6.1.4 Submission of Proposals and Selection of Projects

In addition, the development and presentation of project proposals for universal service funds consideration should not be restricted only to the fund authority or to telecommunications providers, but instead are open to all entities with an interest in contributing to the fulfilment of universal service and access. In Chile, project proposals can be presented by telecommunications service providers, regional/provincial/municipal authorities, universities, non-governmental organisations (NGOs), neighbourhood communities and others. SUBTEL, the entity responsible for administering and managing the country's universal service fund, uses these project proposals to design and develop the fund's annual project agenda.[531] A system where multiple parties can submit project proposals allows all interested parties to contribute in achieving universal service obligation objectives. Having multiple sources for project proposals can provide a more realistic vision of the needs and conditions of the market, such as what type of service is required by localities and which technology is best suited, and are more likely to result in creative and resourceful project solutions.

6.1.5 Revision of Targets

The Universal Service Fund should not only support a country's present universal service objectives, but also be able to adapt to the demands and trends of a converging telecommunications sector by fostering the use of new and innovative technologies to achieve future universal service obligation goals. The advantages and benefits of wireless technologies require that countries reconsider their universal service obligation objectives and establish universal service fund disbursement mechanisms that will support the implementation of new technologies to serve rural populations.

In order to encourage the use of new technologies in achieving universal service and access, countries first have to revise present universal service fund objectives. Given the importance mobile technologies are playing today in providing affordable access to previously unserved or underserved areas and the increasing usage of other new technologies in similar efforts, universal service funds should consider integrating and supporting the application and deployment of new technologies to meet universal service obligation requirements. In Colombia, South Africa and Uganda, mobile payphones and public access businesses have already been used to fulfil regulatory obligations or to meet universal service fund

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530 OSIPTEL Board of Directors Resolution # 025-2005-CD/OSIPTEL, May 2005.

531 SUBTEL decree approving the Guidelines for the Telecommunications Development Fund (Fondo de Desarrollo de las Telecomunicaciones), December 28, 2001.

competition requirements.[532] Because wireless technologies can usually be deployed faster and more affordably, incorporating them into universal service fund programmes can provide countries with the means necessary to meet universal service obligation priorities more efficiently and effectively.

To ensure the smooth incorporation of new technologies into universal service fund programmes, and guarantee the equal participation of all telecommunications sector participants, countries also need to make certain that the purpose of the universal service fund and the role of the universal service provider is well-defined. When Peru's FITEL fund was established, it was determined that the fund would provide populations in rural areas and localities considered of "preferred" social interest with greater access to telecommunications services. In addition, the fund's administration and management regulations stipulated that FITEL would not finance past or future network expansion obligations imposed on telecommunications operators by the government. Thus, the incumbent operator was excluded from accessing FITEL funds to finance its rollout obligations.[533] In Uganda, RCDF funds are only used to improve and service rural areas. In addition, "serve or lose" clauses have been included in main operator licences with regards to rural areas motivating main operators to effectively comply with universal service obligation, but also providing new market entrants with an opportunity to provide those services if the main operator fails to do so.[534] In India, the universal service fund is currently facing problems because, aside from being eligible for universal service funds, the incumbent operator receives Access Deficit Charge (ADC) revenues (that have been reduced from 30 to 10 percent, but that come from the country's universal service fund) to cover its deficit for providing fixed lines in rural and urban areas. This gives the incumbent operator a "favoured" position in comparison to other telecommunications service providers that have access to the fund.

6.2 Key Elements

KEY ELEMENTS TO ILLUSTRATE ESTABLISHMENT AND GOOD GOVERNANCE OF UASF

- **USF:** 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
- **Accountability**: The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions
- **Financing of USF:** Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions
- **Transparency**: The fund is audited bi-annually, and audits, and financial and activity reports are publicly available
- **Project identification**: The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis
- **Project Selection:** Competitive least subsidy bidding is used as the basis for selecting individual projects

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532 Universal Access and Universal Service Funds: Insights and Experience of International Best Practice, Intelecon, July 2005.

533 OSIPTEL Resolution No. 48-2000-CD/OSIPTEL approving Regulations for the Administration and Management of the Fondo de Inversion de Telecomunicaciones (FITEL), October 2000; and Aprueban Normas Complementarias al Reglamento de Administracion y Funcionamiento de FITEL y su Exposicion de Motivos, OSIPTEL Resolucion de Consejo Directivo No. 025-2005-CD/OSIPTEL, May 2005

534 The Challenge of Universal Access – African Solutions for Africa, Country Case: Universal Access in Uganda, Patrick F. Masambu, March 1-4, 2005.

Part 3

6.3 Assessment of National Texts

6.3.1 Summary Chart

Country / Region	USF:	Accountability:	Financing of USF:	Transparency:	Project identification:	Project Selection:
Angola	✓	×	×	×	×	×
Botswana	×	×	×	×	×	×
Democratic Republic of Congo (DRC)	×	×	×	×	×	×
Lesotho	✓	✓	✓	×	✓	×
Madagascar	×	✓	✓	✓	✓	✓
Malawi	×	✓	✓	✓	×	✓
Mauritius	✓	✓	✓	✓	✓	×
Mozambique	×	✓	✓	✓	✓	✓
Namibia	×	✓	✓	✓	×	×
Seychelles	×	×	×	×	×	×
South Africa	✓	✓	✓	✓	✓	✓
Swaziland	×	×	×	×	×	×
United Republic of Tanzania	✓	✓	✓	✓	×	✓
Zambia	✓	✓	×	✓	✓	×
Zimbabwe	✓	✓	✓	✓	×	×

6.3.1.1 Angola

USF: ***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.***

While the 2001 'Basic Telecommunication Law' makes provision for the establishment of a "Universal Service Fund"[535] it makes no mention of this being linked to market analysis or subject to stakeholder consultation. Such details might be contained in the USF charter[536], but there is no evidence that the charter has been drafted or promulgated. Neither Intelecon nor Hudson report the telecomms USF as being operational as yet[537].

535 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.1.

536 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.2.

537 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

There is no information available on this as the 2001 'Basic Telecommunication Law' stipulates that the "composition, responsibilities, competence and jurisdiction" of the USF are to be set out in the putative USF charter[538]

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

The law requires that "telecommunication public network carriers and the telecommunication service providers for public use will participate in financing" towards the USF, and notes that USOs cannot be offset against contributions[539]. It does not, however, indicate the basis for calculating such contributions. With licences not public documents, and in the absence of the putative USF charter, no further detail is available.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

This requirement is omitted from the 2001 'Basic Telecommunication Law', even as a principle. Such "responsibilities" might presumably be covered in the putative USF charter[540]

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

There is no specification as regards the identification of suitable projects in the 2001 'Basic Telecommunication Law'. Such requirements might presumably be covered in the putative USF charter[541], or dealt with in annual reports of the USF, of which none appear to be available.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

No project selection or competitive bidding requirements are specified within the 2001 'Basic Telecommunication Law', even in principle. Such terms might presumably be covered in the putative USF charter[542].

6.3.1.2 Botswana

USF: ***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.***

There is no provision for the establishment of a USF in terms of the current 1996 Botswana Telecommunications Act. The forthcoming, currently unnamed, bill dealing with UAS, is set to establish a USF[543], and may link this to a market analysis and stakeholder consultation, but this document is not yet publicly available at the time of writing.

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538 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.2.

539 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 15.2 & 15.3.

540 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.2.

541 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.2.

542 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 15.2.

543 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

There is nothing to this effect in the 1996 Botswana Telecommunications Act. A pending bill to deal with UAS issues would be expected to set out accountability provisions for the USF[544], but this document is not yet publicly available at the time of writing.

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

This is not specified in the current 1996 Botswana Telecommunications Act. A pending bill to deal with UAS issues would be expected to set out the financing provisions for the USF[545], but this document is not yet publicly available at the time of writing.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

The pending bill to deal with UAS issues would be expected to set out the transparency requirements of the USF[546], but this document is not yet publicly available at the time of writing.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

The pending bill to deal with UAS issues would be expected to address project identification criteria in relation to the operations of the USF[547], but this document is not yet publicly available at the time of writing.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

The pending bill to deal with UAS issues would be expected to specify project selection procedures for the USF[548], but this document is not yet publicly available at the time of writing. The regulator, however, reports that competitive least subsidy bidding was used in awarding tenders to telecomms operators to connect 92 villages[549].

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544 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

545 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

546 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

547 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

548 Botswana (nd) 'Universal Access and Service (USA) Policy', Republic of Botswana – Government Portal, available online at www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Communications-Science--Technology/Departments/Telecommunications/

549 BTA (2010) 'Annual Report Of Botswana Telecommunications Authority : 2010', Botswana Telecommunications Authority, Gaborone, p11.

6.3.1.3 Democratic Republic of Congo (DRC)

USF: ***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 Telecommunications Law provides that a fund is to be set up which is to be managed by the regulator, but does not mention any periodic reviews of the fund or universal service obligations.[550] The stated intention is to finance the provision of covered services through a fund constituted of contributions assessed against all operators, providers of services, and manufacturers or importers of telecommunications materials.[551] Article 39 of the Telecommunications Law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued. The DRC page on the ITU ICT Eye Survey reports that the DRC does not yet have a functioning fund[552].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

Article 39 of the Telecommunications Law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued. The DRC page on the ITU ICT Eye Survey reports that the DRC does not yet have a functioning fund[553].

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

The stated intention of the Law is to finance the provision of covered services through a fund constituted of contributions assessed against all operators, providers of services, and manufacturers or importers of telecommunications materials.[554] Article 39 of the Telecommunications Law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued. The DRC page on the ITU ICT Eye Survey reports that the DRC does not yet have a functioning fund[555].

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

Article 39 of the Telecommunications Law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued. The DRC page on the ITU ICT Eye Survey reports that the DRC does not yet have a functioning fund[556].

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

Article 39 of the Telecommunications Law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued. The DRC page on the ITU ICT Eye Survey reports that the DRC does not yet have a functioning fund[557].

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550 *Loi-Cadre No. 013/2002 du 16 Octobre 2002 sur les Télécommunications en Republique Démocratique du Congo* (2002) at Du Service Universel.

551 *Id*.

552 Available at: www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx#

553 Available at: www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx#

554 *Id*.

555 Available at: www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx#

556 Available at: www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx#

557 Available at: www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx#

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

Article 39 of the Telecommunications Law provides that details regarding the functioning of the fund are to be set forth in a ministerial *Arrêté*, but this has not yet been issued. The DRC page on the ITU ICT Eye Survey reports that the DRC does not yet have a functioning fund[558].

6.3.1.4 Lesotho

USF: ***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 2000 Lesotho Communications Authority Act provides for a USF which the regulator "may establish"[559], but does not link this to any market analysis or consultation. However, the regulator undertook a consultative process[560] before issuing the regulation to establish a USF[561]. Neither Intelecon nor Hudson report a telecomms USF as being operational[562].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

The 2000 Lesotho Communications Authority Act makes the regulator responsible for the USF[563]. The USF regulation issued by the regulator in accordance with this provision, puts the governance of the fund under a sub-committee of the regulator, and sets out rules for the operation of the USF[564].

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

The USF is established with seed funding from the regulator. All licensed operators are required to contribute a levy of 1% on their "net operating income". The fund is further augmented by an annual contribution of 25% of the regulator's "surplus" funds, together with possible contributions from government budget appropriations and miscellaneous "grants and levies"[565].

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

There is no formal provision within the regulation for an audit of the fund. However, the USF reports directly to the regulator, and would presumably thus form part of the regulator's own audit processes. Some, but not all, annual reports of the regulator contain copies of audited financial statements.

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558 Available at: www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx#

559 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, section 48 (2).

560 LTA (2002) 'A Universal Access/Service Strategy for Lesotho', Lesotho Telecommunications Authority, Maseru, December 2002, available online at www.lca.org.ls/docs/Public_Consultation_Document_Universal.pdf.

561 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru, Section 4.

562 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

563 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, section 48 (2).

564 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru, Section 4.

565 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru, Section 4.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

The prioritisation of expenditure of the USF is not set in great detail. The enabling regulation prioritises "basic voice telephony" in the first instance, with "Internet access and broadcasting signal transmission" also a priority, albeit a secondary one"[566].

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

The USF is required to adopt "transparent and competitive procurement practices"[567]., which may or may not be defined to mean competitive least subsidy bidding. Only existing licensees are permitted to receive funding from the USF"[568].

6.3.1.5 Madagascar

USF: ***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.***

Madagascar's Telecommunications Development Fund ("Fund") was created in 1999 to extend telephony service to unserved zones where such extension cannot be achieved without subsidies.[569] The Fund is also to support the expenses incurred by the regulator, the Office Malagasy d'Etudes et de Régulation des Télécommunications (OMERT), in studying and selecting operators to expand services.[570] No consultation took place prior to the establishment of the Fund. Both Intelecon and Hudson report a telecomms USF as being in operation[571].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

OMERT is charged with the day-to-day management of the Fund. To that end, it opens bank accounts dedicated to housing universal service funds, and must keep separate books for the Fund operators that show the nature and amount of resources, expenses, debts, and available funds. Excess funds are carried over to the next fiscal year.[572] The Ministry of Telecommunications, Posts and Communication oversees OMERT's management of the Fund.[573] OMERT is also required to file an annual report on the Fund to the Ministry, as well as publish an annual report, which includes a detailed accounting of Fund monies for the previous year.[574] Its Fund accounts must be verified by an independent accountant for veracity and compliance with Malagasy accounting standards. The Fund must be separately managed from other OMERT monies.[575]

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566 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru, Section 8.

567 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru, Section 6 (1) (f).

568 LCA (2009) 'Lesotho Communications Authority (Universal Access Fund) Rules', Supplement No 1 to Gazette No 16 of 13 March 2009, Lesotho Communications Authority, Maseru, Section 9.

569 *Décret No. 99-191 Portant modalités de mise en oeuvre et de financement de l'accès aux services de télécommunication* ("Decree 99-191") at Art. 7(1).

570 *Id.* at Art. 7(5).

571 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at http://www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

572 Decree 99-191 at Art. 7(4).

573 *Id.* at Art. 7 and *passim*.

574 *Id.* at Art. 7(6) and(7).

575 *Id.* at Art. 7(6).

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

The Madagascar Fund receives money from several sources:

- The government's general budget;
- Annual contributions of operators, which are equal to two percent of their gross revenues earned from operating public telecommunications networks and the provision of public telecommunications services;
- Public or private contributions to the fund; and
- Local communities seeking to improve telecommunications in their areas.[576]

There is also a geographic rate averaging requirement within operators' service areas, with certain exceptions such as pre-approved extraordinary construction charges and volume discounts.[577] OMERT collects the funds from operators.[578]

All licensed network owners and providers of telecommunications services must pay an annual contribution of two percent of their gross book revenues that were generated by the operation of their networks or the provision of telecommunications services to the public. There are no explicit exemptions of any class of revenues, such as inter-carrier compensation (*e.g.*, interconnection fees, roaming, wholesale revenues).[579]

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

OMERT is required to file an annual report on the Fund to the Ministry, as well as publish an annual report, which includes a detailed accounting of Fund monies for the previous year.[580] Its Fund accounts must be verified by an independent accountant for veracity and compliance with Malagasy accounting standards. The Fund must be separately managed from other OMERT monies.[581]

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

OMERT determines which communities are in need of service and the level of subsidies necessary to achieve coverage, and submits a plan to the Ministry for approval.

In order to determine which communities may receive funding, OMERT first classifies communities in Madagascar into the following categories, which is then used for further evaluation:

- there is access to telecommunications services throughout the community or only a portion,
- service is provided only in manual/operator switching mode,
- service is limited to [public] access points,
- no service is available.

576 *Id.* at Art. 7.
577 *Id.* at Art. 5.
578 *Id.* at Art. 7(3).
579 *Id.* at Art. 7(2)(b).
580 *Id.* at Art. 7(6) and(7).
581 *Id.* at Art. 7(6).

It then evaluates each community based on factors that include population density, economic activity, distance from the national network, volume and nature of demand, and level of investment and subsidies that would be necessary to achieve desired services.[582]

Communities or groups of communities may file a request with the Ministry (but copying OMERT) for an extension of services. These requests should include the community/communities' proposed financial contributions. OMERT is then to amend its list of communities to make note of the requests filed, including what was requested, the proposed funding and the community funding proposed.[583] If a community is contributing to the subsidy, no payment is made until the community remits its portion.[584]

OMERT is also required to conduct a study every three years that compares representative pilot projects in different situations, taking into account factors such as population density, nature of economic activities, and distance from the national network. The purpose of this study is to compare investment costs and use of the new services, taking into account the choice of possible technologies. OMERT is to ask national operators for cost and technical information in order to conduct the study, including confidential information (which shall not be published). These studies are to evaluate the volume and nature of demand, the most economical technology, costs over a 10 year period that takes into account current cost of capital, the level of initial funding necessary in order to ensure long term financial stability for the project. Based on this study, OMERT then further classifies the projects based on the level of subsidy necessary. OMERT then gives this list, along with the list of communities with no service, to the Ministry. These financial evaluations, particularly the level of necessary subsidies, are confidential and may only be accessed by OMERT and Ministry staff.[585]

Based on the information provided by OMERT, the Ministry issues a ministerial order that establishes a triennial programme (revised annually) for extension of services, that takes into account the following factors:

1. projects that appear profitable are automatically included in the programme;
2. other projects are included with due consideration for competition for funding, and priority is given to those requiring the least amount of subsidy;
3. in considering the level of subsidy, any supplemental community funds are to be taken into account;
4. the programme may include projects to provide partial coverage, limited to public access points;
5. the programme must take into account experience in carrying out other projects, particularly with respect to implementation deadlines.[586]

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

OMERT is tasked with the technical organization of the programme and ensuring its implementation.[587] Once the plan has been approved, OMERT submits a technical dossier to the Minister each year including an evaluation of demand and estimated investment requirements for each of the projects. This annotated list of projects is then submitted to national fixed operators to inquire whether any of them will serve the area.[588] The operators have three months to respond.[589]

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582 Decree No. 99-191 at Arts. 8-9.
583 *Id.* at Art. 8 (2).
584 *Id.* at Arts. 8-15.
585 *Id.* at Art. 9.
586 *Id.* at Art. 10.
587 *Id.* at Art. 10.
588 *Id.* at Art. 11 (3).
589 *Id.* at Art. 11(2).

If none of the operators accept to take on the project without funding, the projects are to be attributed via a transparent and competitive selection process among interested operators.[590] OMERT publishes annually in the national press a call for expressions of interest to serve the areas slated for that year's programme. Applicants must demonstrate technical, commercial and financial capability.[591] Projects for which qualified applicants applied are assigned pursuant to a restricted tender process. Projects for which no qualified applicants were found are subject to an open competitive process.[592]

Once a pre-selection has been made, OMERT establishes a project profile that establishes the rules for bidding on the project and proposal evaluation, the licence conditions, and where applicable, the maximum subsidy that OMERT is prepared to accept, and final selection criteria. The project profile invites candidates to submit a detailed plan to provide services, which is to include the technical specifications, commercial strategy and budgetary plans on a five-year horizon. This should include projected revenues and expenses. The profile will be provided to pre-selected operators or will be subject to an open, competitive process. OMERT will first evaluate the technical aspects of the proposals, and then evaluate the financial proposals of those passing the technical evaluation. Any minor inconsistencies between the profile and the proposal are resolved through negotiation. If no proposal is deemed acceptable, OMERT suggests corrective measure to the Ministry designed to raise interest among operators.[593]

6.3.1.6 Malawi

USF: ***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 establishment of a 'Rural Telecommunication Development Fund' is provided for in the 2002 Rural Telecommunications Policy[594] and is dealt with in legislation currently pending[595]. There is no evidence of either a market analysis or stakeholder consultation underpinning this decision.

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

This is not provided for in terms of the 1998 Communications Act. The 2002 Rural Telecommunications Policy, however, places administration of the fund firmly in the hands of MACRA, the regulator[596], as do the provisions of currently pending legislation, which make the regulator responsible for the management of the USF[597].

590 *Id.* at Art. 12.
591 *Id.* at Art. 13 (2) and (4).
592 *Id.* at Art. 13 (5).
593 *Id.* at Art. 14.
594 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 9.
595 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.
596 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 8.
597 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

The 2002 Rural Telecommunications Policy leaves the details of the "modalities" of contributions from operators to the USF firmly in the hands of the regulator[598]. Pending legislation currently provides for an unspecified "levy" to be imposed on licensees as one of the sources of revenue for the USF[599]. Intelecon reports a donor contribution from the World Bank in the form of a "USD 1.2 million grant to implement pilot projects" [600].

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

The 2002 Rural Telecommunications Policy calls for the operations of the USF to be "audited on a yearly basis by an independent auditing firm"[601]. There are currently no audit or transparency requirements imposed on the USF in terms of pending legislation[602].

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

The 2002 Rural Telecommunications Policy identifies only "telecentres"[603] as a specific project area. There is no evidence of a needs analysis underpinning this, however. Intelecon further reports that two pilot projects have been implemented, viz: the rollout of "1 274 public phones in rural areas of ten districts" and the establishment of "Internet access in eight district centres" [604]. There are currently no project identification provisions for the USF in terms of pending legislation[605].

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

Intelecon reports that project funding is "awarded via least subsidy competitive tenders"[606]. Pending legislation refers to "competitive minimum subsidy auctions" but does not define or explain these[607].

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598 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 8.

599 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

600 Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 11, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf .

601 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 9.

602 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

603 Malawi (2002) 'Rural Telecommunications Policy 2002', Ministry of Information, Republic of Malawi, Lilongwe , December 2002, p 9.

604 Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 11, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

605 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

606 Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 11, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

607 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 29.

6.3.1.7 Mauritius

USF: ***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.***

Under section 21 (1) of the ICT Act 2001 it is provided that the Authority shall establish a Universal Service Fund (USF). It is also established under the Act that the Authority shall be the body designated to manage the USF. Pursuant to the recommendations made in January 2006 by the Authority to the Minister in accordance with section 21 (3) of the Act, and further to various consultative meetings that the Ministry held with stakeholders, the Minister has, in accordance with sections 21(3) and 48 of the Act prescribed the manner and basis of contribution into the USF. The said prescription has been made by way of Regulation which is gazetted as GN 206 of 2008. The said Regulations have come into effect since the 3rd October 2008. Intelecon records the telecomms USF as being operational[608].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

Under section 21 (1) of the ICT Act 2001 it is provided that the Authority shall establish a Universal Service Fund (USF). It is also established under the Act that the Authority shall be the body designated to manage the USF. The 2008 Universal Service Regulations provide for the mechanisms to set up the Fund. With the coming into effect of the aforesaid Regulations, an administrative structure and established procedures has been set up for the management of the USF.

In that regard, based on the early consultations conducted by the Authority and in line with best international practices as upheld by the ITU, the Authority was designated to manage the USF.

The operations and objectives of the USF programmes shall be subject to periodic review and revisions, both within the Authority and through public comment and consultation process. The Fund administrator will issue an annual report containing at least the following information:

- Financial reports (collections, expenditures, reserves, etc…)
- Description of projects that were funded.
- Goals and budgets of the USF for the coming years
- Review of previously funded projects.
- Revisions to target objectives and estimates of progress.

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals, supplemented by alternative and collateral contributions.***

In accordance with the 2008 Universal service Fund Regulations, operators make monthly payments to meet the annual contribution obligation.

The USF Monthly Payment Form published by ICTA[609] provides that the breakdown of Monthly Instalment Payable into USF consists of:

> *A) 5% of Gross revenue from the provision of International Roaming Service during that month:*
> *AND*
> *Lesser of B(i) OR B(ii), where*

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608 Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

609 USF Monthly payment Form available at: www.icta.mu/market/quarterly.htm

B)(i) amounts to Rs 1.50 on every minute of incoming international calls which public operator terminates in Mauritius in that month

OR

B)(ii) amounts to 2.5% of annual revenue which public operator generates from the provision of telecommunication services

The computation of the surcharge in case of late payment consists of a surcharge of 1% of monthly instalment payable (A+B(i) or B(ii)) applicable for late payment.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

According to the ICTA 2009 Mauritius Country Report to CRASA, the operations and objectives of the USF programmes shall be subject to periodic review and revisions, both within the Authority and through public comment and consultation process. The Fund administrator will issue an annual report containing at least the following information:

- Financial reports (collections, expenditures, reserves, etc…)
- Description of projects that were funded.
- Goals and budgets of the USF for the coming years
- Review of previously funded projects.
- Revisions to target objectives and estimates of progress.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

In accordance with the ICTA 2009 Mauritius Country Report to CRASA, it is expected that the amount of fund available will be limited and will have to be allocated among a number of competing worthy investments. As such a proper method of rationing are devised. According to ITU guidelines quantitative methods may be used to analyse the various choices, by comparing the long-term net present value of alternative projects, incorporating social benefits. Competitive bidding is a methodology that can be used to determine funding allocation. Under this the licensees are asked to bid for implementing each of the Universal Service. The licensee who bids for the lowest charges for implementing a Universal Service is asked to provide the Universal Service with the bid amount given from the USF. This model has proven successful in Chile.

The Report also states that project proposals shall be evaluated according to the viability and completeness of their implementation plans which in many cases may be a vital factor in determining the success or failure of the project. The evaluation criteria that will be adopted will include basically the following seven elements:

- Location of proposed service,
- Quality of service,
- Quantity of service,
- Community benefits,
- Implementation plan,
- Cost, and
- Bidder qualifications.

The Report also states that implementation plans to be included with project proposals should incorporate the following information:

- Business plans – three to five year budget projections, break-even analysis and market demand analysis are provided.
- Tariff and other pricing proposals – these should include interconnection agreements with other carriers.
- Management plan – these should detail the organisation of the project, the responsibility of personnel.
- Implementation schedule – specific dates and sequence of events, the timing of equipment installation and operation start-up dates are included.
- Publicity and community inclusion programmes – these should describe plans for inviting participation in the project from affected communities as well as gender awareness considerations and publicity and outreach plans to promote use and benefits of service.
- Monitoring and reporting plans – there are provisions for informing USF managers about progress in implementation, the public response to the services, lessons learnt, identified obstacles and possible improvements.

Finally, the Report states that the cost of a project is defined in terms of the proposed subsidy amount requested from the USF to support its implementation. Additional costs beyond the subsidy amount should not be considered but are a factor in the evaluation of community benefits and the above-referred implementation plan. For projects that are otherwise considered to be equivalent according to the other evaluation criteria, the proposal requesting the smallest amount of USF is usually awarded the concession. In case it is difficult to compare projects according to exactly equivalent characteristics, though the amount of subsidy requested remains the selection criterion, other factors may be included to ensure that the winning proposal is the one that provides the greatest net social and economic value.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

Section 7 of the Universal Service Fund Regulations 2008 provides that a bidding exercise open to all licensees shall be used to designate one or more universal service providers.

6.3.1.8 Mozambique

USF: ***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.***

Article 41 of the Law provides for the establishment of a Fund. Intelecon reports the telecomms USF as being operational since at least 2007[610].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

Article 2 of Decree 69/2006 provides that the Fund is established under the management of INCM. The Decree provides for the creation of an Executive Secretariat for the Fund, and defines its mandate. The

[610] Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

Decree also contains provisions relating to the management of the funds and to reporting as to the use of the funds.[611]

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

Article 13 of the Decree provides that sources of the Fund include operator contributions, government grants, interests from deposits, excess from previous years, and other funds which may be provided to the Fund. Operators pay up to 1% of gross revenues. Internet café providers are exempted.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

Article 15 of Decree 69/2006 provides that the accounts shall be audited annually and that the report shall be published.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

Article 10 of Decree 69/2006 confirms that resources of the Fund shall be attributed to programmes, projects, and activities, as included in the Plans and objectives determined by the regulator in accordance with Chapter V of the Law.

The fund's objectives are to promote investment in the provision of service in rural areas at a fair and affordable price. The short-term targets for telephony are to enable the establishment of a publicly accessible telephone within all localities with more than 1,000 inhabitants as well as within 5 km of every rural inhabitant. The short term targets for Internet services are to extend an Internet point of presence – and public access to the Internet though a telecentre – to all District Centres.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

In accordance with Article 40 (2) of the law, projects are selected through public tenders and competitive bids.

The UA programme began with two pilot projects:

- A telephony pilot project to extend transmission, access networks and UA services to one zone of the country, covering five districts of the province of Zambézia and three districts of the province of Nampula, and;
- An Internet service pilot project to provide an advanced level of service to four District Centres in the provinces of Zambézia and Nampula through the provision of Internet PoPs, with a minimum service radius of 5 km from the District Centre.

A bidding process for the UA pilot projects was launched in February 2007. The telephony tender did not receive any bids and was therefore unsuccessful. The internet tender was won by Mozambican broadband wireless operator INTRA Lda.

611 Decree 69/2006.

6.3.1.9 Namibia

USF: ***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.***

Whilst the 2009 Communications Act establishes a "universal service fund", this does not appear to be based on a market analysis or stakeholder consultation[612]. Neither Intelecon nor Hudson record the establishment of this telecomms USF[613].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

The 2009 Communications Act makes the regulator accountable for the USF, with this accountability exercised through the tabling of the annual "universal service report" before parliament[614].

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

Although the 2009 Communications Act provides for a "universal service levy", setting this as a percentage of income is only one of several options. The regulator is empowered to set the frequency and means of payment[615]. There is no provision for this to be supplemented from any other sources.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

Financial reporting on the USF done through the tabling of the annual "universal service report" before parliament[616]. This report should contain audited financial statements[617].

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

There are no specific project selection criteria specified in the 2009 Communications Act, nor is there any requirement that a needs analysis should precede expenditure.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

While the law provides for expenditure to be undertaken either through "tenders" or "competitive bidding"[618], there is no requirement that this are on a least subsidy basis in either case. It is also important to note that only "licensees" for funding from the USF[619].

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612 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 56.

613 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

614 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 58.

615 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 23.

616 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 58.

617 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Sections 58 (2) and 26.

618 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Sections 57 (7).

6.3.1.10 Seychelles

USF: ***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.***

Section 28 of the Act provides that there shall be a fund which shall be called the Telecommunication Universal Service Fund (in this Act referred to as "the Fund"). Neither Intelecon nor Hudson report this telecomms USF as being operational as yet[620].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

Section 28 of the Act provides that the Minister shall be responsible for the administration of the Fund.

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

Section 28 of the Act provides that every holder of a telecommunication service licence shall pay a contribution to the Fund at such rate and at such times as may be prescribed.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

Section 28 of the Act provides that the accounts of the Fund shall be audited annually by the Auditor General.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

There are no such provisions in the Act.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

Section 28 of the Act provides that the Minister may, from time to time, pay out of the Fund to any holder of a telecommunication service licence such sum of money as the Minister may deem fit and necessary for the purpose of assisting such holder to extend the service or any part of it to areas and communities which are in need of the service.

6.3.1.11 South Africa

USF: ***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.***

Although the 2006 Electronic Communications Act provides for a Universal Access and Service Fund as a successor to the Universal Service Fund, there is no evidence that this is linked to an analysis of the

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619 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Sections 56 (4) (b).

620 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

market or stakeholder consultation other than that related to the legislation per se. [621]. Both Intelecon and Hudson report the telecomms USF as being operational since 1998[622].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

The management of the Universal Access and Service Fund rests with the UAS Agency, which is in turn accountable to the board. The independence of the board is somewhat limited in that it is directly appointed by the Minister without any public process and is required to act in "accordance with any policy direction issued by the Minister". Further, its administration of the USF is "subject to the control and in accordance with the instructions of the Minister".[623]

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

Contributions to the Universal Access and Service Fund are a levy on operator turnover "which must not exceed 1 per cent of the licensee's annual turnover",[624]with broadcasting service licensees able offset their contributions to a separate fund designed to support the provision of local content against their USF levy. There is no provision for alternative or collateral contributions to the fund.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

The 2006 Electronic Communications Act requires that the Universal Access and Service Fund be audited annually and requires the "Minister [to] table a copy of the audited accounts and balance sheet in Parliament".[625]

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

Allowable expenditure from the Universal Access and Service Fund is couched in very generic rather than specific terms. The 2006 Electronic Communications Act requires that the fund be "utilised exclusively for the payment of subsidies... for the assistance of needy persons towards the cost of the provision to, or the use by, them of broadcasting and electronic communications services... [or] to any broadcasting service licensee and electronic communications network service licensee for the purpose of financing the construction or extension of electronic communications networks in underserviced areas... [or] to public schools and public further education and training institutions... for the procurement of broadcasting and electronic communications services... [or] for the establishment and operation of broadcasting services and for the establishment and operation, including training of and the payment of allowances to

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621 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 87.

622 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

623 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Sections 80, 81 and 87 (4).

624 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 89.

625 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 91.

personnel of centres where access can be obtained to electronic communications networks".[626] There is no legal requirement for a carefully researched needs analysis.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

The 2006 Electronic Communications Act requires project implementation to take place through a "competitive tender" process that it outlines in some detail. [627]. There is no least subsidy requirement.

6.3.1.12 Swaziland

USF: ***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.***

Section 37 of the [DRAFT?] Electronic Communications Bill provides that the Government of the Kingdom of Swaziland will decide on whether or not to establish a donor-supported Rural Access Fund (RAF), which the Bill foresees as a Fund aimed at providing grant support to co-fund priority investments increasing the access of the rural population to basic infrastructure services, such as electricity and electronic communications. The Bill also provides that should such a Fund be established, then the Minister in consultation with the Commission shall develop a policy for the manner in which the funds from Rural Access Fund are to be used in conjunction with the connection targets fixed in the tariff approval procedures. Intelecon reports the telecomms USF as being operational[628].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

Section 37 of the [DRAFT?] Electronic Communications Bill provides that the Government of the Kingdom of Swaziland will decide on whether or not to establish a donor-supported Rural Access Fund (RAF), and that should such a Fund be established, then the Minister in consultation with the Commission shall develop a policy for the manner in which the funds from Rural Access Fund are to be used.

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

Section 37 of the [DRAFT?] Electronic Communications Bill provides that the Government of the Kingdom of Swaziland will decide on whether or not to establish a donor-supported Rural Access Fund (RAF). Section 36 also provides that the Commission may make it a condition of a grant of a licence that every provider of public electronic communications services shall contribute to a universal access fund

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

Section 37 of the [DRAFT?] Electronic Communications Bill provides that the Government of the Kingdom of Swaziland will decide on whether or not to establish a donor-supported Rural Access Fund (RAF), and that should such a Fund be established, then the Minister in consultation with the Commission shall develop a policy for the manner in which the funds from Rural Access Fund are to be used.

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626 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 88.

627 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 90.

628 Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

Section 37 of the [DRAFT?] Electronic Communications Bill provides that the Government of the Kingdom of Swaziland will decide on whether or not to establish a donor-supported Rural Access Fund (RAF), and that should such a Fund be established, then the Minister in consultation with the Commission shall develop a policy for the manner in which the funds from Rural Access Fund are to be used.

Section 36 also provides that the proceeds of the fund shall be used for the development and expansion of electronic communications networks and services in areas where there are no services and to provide access to the widest number of users including those with disabilities.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

Section 37 of the [DRAFT?] Electronic Communications Bill provides that the Government of the Kingdom of Swaziland will decide on whether or not to establish a donor-supported Rural Access Fund (RAF), and that should such a Fund be established, then the Minister in consultation with the Commission shall develop a policy for the manner in which the funds from Rural Access Fund are to be used.

6.3.1.13 United Republic of Tanzania

USF: ***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 2006 Universal Communications Service Access Act provides primarily for the establishment of a Universal Communications Service Access Fund, but there is no evidence that this was supported by either a market analysis or a process of stakeholder consultation. Both Intelecon and Hudson report a telecomms USF as being in the planning stages[629].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

The 2006 Act indicates that the Universal Communications Service Access Fund will be financed through various sources including: funds appropriated by Parliament, subventions received from the Tanzania Communications Regulatory Authority (TCRA), the universal service fee paid by all communications licence holders, as well as grants donations, bequests, other contributions or transfers granted by individuals or legal entities (whether local or foreign) and fees and contributions collected for services supplied by the Fund. [630] The universal service fee to be paid by all communications licence holders is to be based on each licence holder's eligible revenue and this fee is not to exceed 1.5 percent of each licensee's gross operating revenues. [631]

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629 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

630 *Id.* at Art. 23.

631 *Id.* at Art. 18.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

The USF is required to submit to the Minister an "annual report [providing] detailed information regarding the exercise of the functions and powers of the Fund".[632] The USF is required to be audited by the "Controller and Auditor General... at least once every two years"[633] and more often if necessary.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

Universal service providers are required to submit project plans setting out how they will meet their USO targets, and these are required to go through a detailed approval process, However, the 2006 Universal Communications Service Access Act provides detail on what projects should receive priority or that a needs analysis are undertaken.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

The Universal Communications Service Access Fund will allocate funds to universal service providers through a competitive bidding awards process.[634] In addition, the Fund will determine the universal service subsidies that will be allocated for each claim period[635] and will make sure that each universal service area has a subsidy in relation to each universal service obligation.[636]

6.3.1.14 Zambia

USF: ***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 2009 ICT Act provides for the establishment of a USF as a financial mechanism to support UAS[637]. While this may have its roots in the 2006 ICT Policy which called for the "establishment of a Rural ICT Development Fund"[638], there is no evidence that the USF is linked to either market analysis or stakeholder consultation. Neither Hudson nor Intelecon report a telecomms USF as being in operation as yet[639].

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632 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 26.

633 Tanzania (2006) 'The Universal Communications Service Access Act, 2006', United Republic of Tanzania, Dar es Salaam, Section 25.

634 *Id.* at Art. 15.

635 The 2006 Act does not specify the length of time for a claim period.

636 *Id.* at Art. 19.

637 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 70.

638 Zambia (2006) 'National Information and Communication Technology Policy', Ministry of Communications and Transport, Lusaka, April, 2006, p35

639 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

Accounting lines for the USF are somewhat unclear. On the one hand, the fund is to be "managed and administered by a Fund Manager appointed [by the regulator]"; on the other, it reports via the Minister and the National Assembly[640].

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

Details of contributions to the USF are not laid down in the 2009 ICT Act, which empowers the regulator to recommend to the Minister via regulations "the annual contributions payable by any licensee", although the law does specify that such contributions may not "exceed the amount prescribed by the Minister, in consultation with the [regulator]"[641]. There is no evidence that these regulations have been drafted or promulgated, or that the Minister has prescribed the required amount.

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

A number of measure to promote transparency as regards the activities and financial status of the USF are stipulated in the 2009 ICT. The manager of the USF is required "each year [to] publish details of the activities of the Fund", while the Minister is required to ensure that the "annual statement of the income and expenditure of the Fund [is] prepared and laid before the National Assembly" and the regulator is required to publish annual "details of the contributions to, and allocations from the Fund" [642].

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

The 2009 ICT Act specifies that project identification be specified via regulations recommended to the Minister by the regulator dealing with "activities that the Fund shall finance and the manner in which such financing shall occur"[643]. There is no evidence that these regulations have been drafted or promulgated. The web site of the regulator does, however, list three projects earmarked for USF funding, viz: the establishment of Multi-purpose Community Telecentres, the provision of rural Internet points of presence, and the provision of shared GSM base station infrastructure[644].

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

Competitive least subsidy bidding might be specified via the as yet unpublished regulations regarding the activities of the fund.

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640 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 71.

641 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 70 (4) (e).

642 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, sections 71 & 72.

643 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, section 70 (4).

644 ZICTA (nd) 'Multi-purpose Community Telecentres (MCT) Projects and Training', 'Internet Point of Presence (PoP)' & 'GSM Mobile Base Stations ', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/universal-access/universal-access-projects/multi-purpose-community-telecetres.html, www.caz.zm/index.php/universal-access/universal-access-projects/Internet-point-of-presence.html & www.caz.zm/index.php/universal-access/universal-access-projects/gsm-mobile-base-stations.html respectively

6.3.1.15 Zimbabwe

USF: ***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.***

Both the 2000 Postal and Telecommunications Act and the 2001 Broadcasting Services Act provide for the establishment of their respective USFs, but there is no evidence that this was linked either to an analysis of the market or to consultations with stakeholders[645]. However, neither Hudson nor Intelecon report a telecomms USF as being in operation in Zimbabwe[646].

Accountability: ***The law clearly identifies who is responsible for the management and operation of the Fund, preferably the regulator, and ensures the independence of this entity through clear regulatory provisions.***

The regulator is the accountable entity for the USF in both cases, "vested... as trustee" under the law[647], responsible for financial control of funds, their expenditure and accountability, with the Minister responsible for investment decisions as regards surplus funds.

Financing of USF: ***Contributions to the fund are based on a percentage of revenues of all applicable operators, paid at reasonable intervals,. supplemented by alternative and collateral contributions.***

Licensees are required to pay a "prescribed annual contribution" to the USF, but the law makes no provision for how this are determined[648]. Alternative and collateral contribution may be made via "moneys appropriated by Act of Parliament", surplus "moneys... the funds of the Authority' and "other moneys [such as fines imposed on licensees] to which the Fund may be lawfully entitled"[649].

Transparency: ***The fund is audited bi-annually, and audits, and financial and activity reports are publicly available.***

The law requires that both USFs be annually "audited by the Comptroller and Auditor-General... [in terms of the] Audit and Exchequer Act.. as though the assets of the Fund were public moneys"[650], No audit reports appear to be publicly available.

Project identification: ***The expenditure of funds prioritises public access points, telecentres, SMMEs, co-operatives or other projects subject to a carefully-researched needs analysis***

The objects of the USF in both cases do not specific details of projects to be supported, focusing rather more generally on such support as grants to assist "needy persons", financial support for the "extension of postal and telecommunication services to underserviced areas and community centres", interventions to support the "use of telecommunication services for the benefit of disabled persons", and support for

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645 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 73 & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 29.

646 Hudson, H (2010) 'Defining Universal Service Funds', Intermedia, March 2010 Volume 38 Issue 1, available online at www.iicom.org/intermedia/IM March 2010 USF.pdf and Intelecon (2010) 'Universal Access And Service Funds 2009 : Update From Intelecon', Intelecon Research & Consultancy Limited, Vancouver, p 10, available online at www.inteleconresearch.com/pages/documents/UASFFunds2009update-Oct2009.pdf.

647 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 73 (2) & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 29 (2).

648 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 76 (1) & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 32 (1).

649 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Sections 75 & 76 & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Sections 31 & 32.

650 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 79 & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 35.

"training" and "research and development"[651], No needs analysis is mandated, but the regulator is required to draft an "annual implementation plan... in consultation with... licensees"[652]. There do not appear to be any such implementation plans publicly available.

Project Selection: ***Competitive least subsidy bidding is used as the basis for selecting individual projects***

Neither the 2000 Postal and Telecommunications Act nor the 2001 Broadcasting Services Act 'lay down no specifications as regards project selection.

6.4 International Case Studies

6.4.1 COMESA

THE 2004 COMESA Policy Guidelines on Universal Service/Access contain clear provisions regarding funding sources and management of Universal Service and Access Funds.

In terms of funds, the Guidelines prescribes that Universal Service Funds may be constituted through contributions from various sources, including government allocations, licensing fees, auctions, proceeds from privatisation, levies from ICT operators, sponsorships form local companies, cooperating partners, etc.[653]

The Guidelines also set forth a number of principles relating to the management of Universal service and access Funds, and recognize that the critical issue in the management of such funds is to create certainty and confidence in the framework so that all stakeholders may believe in and support the process, and that information on how the fund is used shall be made public.[654]

The Guidelines also recognize that civil society should play a key role by helping in the selection process of programmes targeting specific development goals and programmes.

Key principles include: neutrality or the consideration of all operators on the same basis regardless of technology used; clear targets, or the clear definition of zones to be covered under a specific period of time; selection process, or the use of competitive bidding for projects; and, transparency in carrying out fund activities.

The Guidelines also promote the concept of smart subsidies, stating that sustainable growth are sought in carrying out projects. The Guidelines provide examples, such as Rural Public Call Offices, Networks for Rural Intermediate Agencies, etc.

In terms of the implementation of the Programmes, the Guidelines define a number of phases, including a Preliminary Stage, where the needs of each individual locality is clearly defined and assessed, projects are segmented into sub-projects and syntheses are made for projects as a whole.

The Guidelines also recommend having competitive bidding as a process, particularly in liberalised markets.

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651 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 74 & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, section 30.

652 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 74 & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 30.

653 COMESA Policy Guidelines on Universal Service/Access, August 2004, Section 6.8.1-6.

654 *Id.,* Section 6.8.7.

6.4.2 Peru

The FITEL experience provides valuable lessons on the importance of designing projects and key regulatory conditions, especially tariffs and interconnection, as prerequisites for success. Due to the fact that Peru is a mountainous country, most of the projects have been implemented using VSAT technology.

Peru's Fondo de Inversión en Telecomunicaciones (FITEL) was created in 1993 to provide funding for the expansion of telecommunications to underserved, mainly rural areas.[655] FITEL is managed by a Board of Directors comprised of the Minister of Transportation and Communications, the OSIPTEL Chairman, and the Minister of Economics and Finance.[656] DS No. 010-2007-MTC establishes the rules and procedures for managing FITEL, including the obligations for the Technical Secretariat and the Board of Directors.

The Ministry's Technical Secretariat proposes projects to provide telecommunications for rural areas or PPSI. The project must be approved by the Board of Directors and follow the Public Investment National System procedures established by the Ministry of Economic and Finance for final approval, which involves different stages until the project is declared "feasible" and then "approved."[657] When a telecommunications project is declared "feasible," the money is moved to a private trust fund to guarantee that the money will be available for the project, and the Agency for Promotion of Private Investment prepares reverse auction tender documents. Funds are paid to project winners throughout a five-year period with a 25 to 40 percent initial down payment and 10 additional payments in equal instalments.

FITEL collects a fee of one percent of telecommunications service providers' annual income (discounting taxes) from the provision of telecommunications services.

A significant difference in the project designs between FITEL I and subsequent FITEL projects was asset ownership. In the case of FITEL I, the government of Peru was established as the owner of the network assets. In all other subsequent FITEL projects, the network assets were owned by the operators themselves.

FITEL I was conceived and implemented as a pilot project and became officially operational in 2000. The purpose of the project was to improve telecommunications access in northern border regions as well as to test the suitability of VSAT-based systems for voice communications.

FITEL II requested a public point of Internet access in designated district capitals in addition to the public payphones, delivering data rates of at least 9.6 Kbps (19.4 Kbps was more typical of actual performance).

FITEL III requested provisioning for three voice-grade lines in 25 per cent of the locations. On request, the licensed operator had to provide two more additional lines besides the public payphone in those locations, and there was no further subsidy available associated with the installation of these additional lines.

In FITEL IV the objective was to install an additional public phone in places where public phones already existed. The network was also dimensioned for three voice-grade lines and one data port per location.

Regulatory problems arose for the rural operators. The low local tariffs set by the regulator were financially unfeasible to the operators. Traffic data analyses showed that more than 70 per cent of calls were intra-departmental, charged at a local calling rate. However, for a user to have made a local call, the

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655 Telecommunications Bill (approved by Supreme Decree No. 013-93-TCC (April 28, 1993) and modified by Bill 27010 (Dec. 8, 1998) and Bill 28737 (May 18, 2006)).

656 FITEL was managed by OSIPTEL until Jan. 3, 2007.

657 Eight projects were assigned to two telecommunications service providers through four tenders. The Public Investment National System procedures were in place for telecommunications projects. Thereafter, two more tenders were assigned four additional projects to the same telecommunications service providers through reverse auctions.

two rural operators using a VSAT network had to route calls via satellite, thus incurring satellite transmission cost. The local call tariffs did not allow the rural operator to recover its full costs even after subsidy payments, let alone to have made a reasonable profit. This created acute financial difficulty for the rural operators.

Interconnection rates were also problematic. The interconnection rates and procedures for rural operators in Peru were the same ones that were applicable to the remaining non-rural operators, thus, they did not reflect the higher network and operation, and maintenance costs. After a review of the issues, the regulator made the required regulatory changes.[658]

6.4.3 Nigeria

Pursuant to Chapter VII, Part IV, of the Communications Act of 2003,[659] the Federal Government of Nigeria was mandated with establishing a Universal Service Provision Fund (USPF) to facilitate rapid achievement of national policy goals for universal access to telecommunications, information and communication technologies (ICTs).

In view of the above, the Universal Service Provision Fund, in conjunction with the Nigerian Communications Commission invited all policy makers, telecommunication service providers, NGOs, Civil Society, Local Communities and the general public to a Consultative Forum held October 31, 2006. The following issues were discussed:

- Strategies and mechanisms for extending access to rural and underserved areas of Nigeria.
- Criteria and modalities for eligibility to access the fund
- Type of Projects to be funded
- Appropriate technology for service provisioning in rural and underserved areas.
- Micro-financing mechanism
- Tariff and Interconnection for rural areas
- Affordability and sustainability concerns of ICT services provisioning for rural areas
- Alternate Power Sources
- Research and Development .

In August 2007, the NCC issued its Universal Access and Universal Service Regulations (the Regulations). The 2007 Regulations set out a broad policy to address the USP Fund provision of the Act and provide detail on the priorities of the USP Fund. The Fund seeks to contribute to national economic and social development by enhancing the universal accessibility and availability of telecommunications and ICT infrastructure and services to all, particularly to rural residents, and socially and physically disadvantaged populations. The Fund also seeks to promote technological innovation and competition in ICT service delivery in rural areas; support the establishment of efficient, self-sustaining, market-oriented businesses, including cooperatives, which will continue to expand access to ICTs on their own initiative, requiring the minimum amounts of short- and long-term Fund support possible as well as ensure effective utilization of funds to leverage investments in rural communications. Within that context, the priorities of the Fund are to provide financial support for ensuring universal access and universal service to specific areas defined as follows:

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658 Sources: Intelecon report evaluating the FITEL programme on behalf of the World Bank and OSIPTEL in 2003/2004, and http://icttoolkit.infodev.org/en/PracticeNote.3143.html

659 Nigerian Communications Act, 2003, available at : www.ncc.gov.ng/RegulatorFramework/Nigerian%20Communications%20Act,%202003.pdf

- unserved areas, which are geographic areas where there is no level of access currently available;
- underserved areas, which are geographic areas where some level of access may currently be available, but not across the entire regional segment; and
- underserved groups within a community, which refers to a designated population segment that share a common set of characteristics and unlike the rest of the community do not have universal access.

The USP Fund is financed through contributions made to the USP Fund by NCC that are based on a portion of the levies paid to the NCC by licensees.[660] The initial amount of the NCC USP Fund contributions consists of one percent of net revenues of the licensees.[661] In addition, the NCC may determine to increase or decrease the amount of the contribution based on the estimated financing needs of the USP Operating Plan, as well as recommendations by the USP Secretariat.[662] In this case, the NCC shall establish an additional fee, called the USP levy, which shall be levied on all licensees of the NCC to support USP activities, and will not exceed one per cent of net revenues of the licensees.[663] Such contributions are paid each calendar quarter into the Fund.[664]

There may be additional sources of financing for the fund. According to the Act, the National Assembly can also appropriate monies to the Fund on an as needed basis.[665] The Act also indicates that gifts and loans can accrue to the Fund as well,[666] the nature of the gifts or loans that may be made are not specifically addressed.

Overall, universal service and universal access in Nigeria are managed by a Universal Service Provision Board (USP Board) and a USP Secretariat.[667]

The functions of the USP Board are defined in the regulations as follows:

- To supervise and provide broad policy directions for the management of the USP Fund and the USP Fund Managers;
- To appoint and remove USP Fund Managers, in consultation with the NCC;
- To appoint and remove auditors of the USP Fund;
- To approve Operating Plans, which shall include one or more USP Programmes and USP projects and a budget for all operations and expenses of the USP Board, USP Secretariat, USP Fund Managers and all other matters to be financed by the USP Fund during the period of the Operating Plan;
- To approve standing orders to establish and regulate the activities of the USP Fund Manager, and revisions to such standing orders;
- To approve all processes, procedures, guidelines, and decisions to give full force and effect to the regulations;
- Any other functions assigned to it.[668]

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660 *Id.* at paragraph 71.
661 *Id.* at paragraph 71.
662 *Id.* at paragraph 71.
663 *Id.* at paragraph 72.
664 *Id.* at paragraph 71.
665 The Nigerian Communications Act of 2003, Chapter VII, Consumer Affairs, Part 4, paragraph 114.
666 *Id.* at paragraph 114.
667 Universal Access and Universal Service Regulations of 2007, paragraph 24.
668 Universal Access and Universal Service Regulations of 2007, paragraph 4.

The Act provides that the USP Secretariat, which is responsible for the day-to-day management of the USP, shall reside in the NCC. The NCC, in turn, shall ensure that the USP Secretariat is staffed with suitably qualified and experienced personnel, who may be seconded from the NCC staff.[669] The regulations further provide that the NCC may also recruit suitably qualified personnel from outside the NCC as required to meet the staffing requirements of the USP Secretariat.[670]

The functions of the USP Secretariat as provided for in the Act include:

- Receiving applications for loans and grants from eligible persons such as community-based communications operators;
- Reviewing such applications and making recommendations to the USP Board as to which applications are funded;
- Liaising with other departments in NCC in processing licences for funded applications;
- Providing loan recipients and grantees with technical and managerial assistance, such as resolution of equipment vendor issues and setting up billing systems;
- Evaluation of project performance and effecting such actions as may be necessary to ensure that loan recipients and grantees meet objectives for network expansion and provision of service;
- Enforcing standards of quality of service in rural and underserved areas set by the USP Board;
- Collecting USP assessments and loan repayments and paying such loan repayments into the USP Fund;
- Evaluating the effectiveness of the USP in meeting policy goals as set by the government and the USP Board;
- Facilitating collaboration between activities that are funded by the USP Fund and other infrastructure and development efforts; and,
- Liaising between the USP Board and the USP Fund Managers.[671]

The regulations define additional functions of the USP Secretariat to include:

- Preparing and recommending to the USP Board the Operating Plans;
- Preparing and recommending to the NCC and to the USP Board the standing orders to establish and regulate the structure and activities of the USP Secretariat and the USP Fund Manager, and revisions to such standing orders from time to time;
- Coordinating with the NCC in order to carry out these functions;
- Preparing and recommending to the USP Board all processes, procedures, guidelines and decisions necessary to give full force and effect to the regulations; and,
- Performing all other functions assigned to it.[672]

The Board and the Secretariat supervise and provide policy direction for the management of the USP Fund and the USP Fund Managers.[673] According to the regulations, the USP Board will, in consultation with the NCC, appoint an independent and "competent" investment management firm to serve as the USP Fund Managers.[674] The regulations further provide that the USP Secretariat shall conduct a public, transparent

669 The Nigerian Communications Act of 2003, Chapter VII, Consumer Affairs, Part 4, paragraph 118.
670 Universal Access and Universal Service Regulations of 2007, paragraph 22.
671 The Nigerian Communications Act of 2003, Chapter VII, Consumer Affairs, Part 4, paragraph 118.
672 Universal Access and Universal Service Regulations of 2007, paragraph 24.
673 *Id.* at paragraph 4.
674 *Id.* at paragraph 27.

and competitive selection process to select the investment management firm. Following the selection process, the USP Secretariat will submit its recommendation to the USP Board for approval.[675]

Responsibilities of the Fund Managers as defined in the Act include:

- To maintain USP Funds financial accounts and records;
- To collaborate with the USP Secretariat in the collection of the USP assessments and loan repayments;
- To estimate the amount needed annually to sustain the rate of network expansion determined by the NCC as appropriate to meet USP Policy objectives;
- To determine the amount of annual revenue required to ensure that the USP Fund remains fiscally sound, and to calculate the corresponding rate of assessment;
- To disburse funds to eligible entities based upon approvals by the USP Board;
- To invest USP funds cash reserves under directions from the USP Board and to establish cash management procedures to ensure maximum return on investments while meeting short-term cash requirements for disbursements;
- To regularly report on financial performance of the USP Fund to the USP Board; and,
- To assist the USP Secretariat in evaluating the effectiveness of the USP in meeting policy goals as set by government and the USP Board.[676]

The USP Fund Managers report on a quarterly basis to the USP Board and the USP Secretariat on the status of the fund including a report detailing the financial situation and performance of the fund.[677]

The difference between the amounts collected or received by the USP Fund and the amount actually disbursed will be retained by the USP Fund for future financing opportunities.[678] The only non-USP specific subsidy expense that is charged to the Fund is the administrative and operational expenses for the Fund (these are developed in the operating plans as outlined below).[679]

The USP Fund shall consist of one or more accounts established in one or more Nigerian Banks with direct foreign currency trading rights. The assets of the USP Fund may be invested in either fixed bank deposits; treasury bills and securities of the Government; and other means approved by the USP Board in accordance with applicable financial regulations.[680] The Act also establishes that the NCC shall ensure that the USP Fund is at all times totally separated from the NCC's Fund and transparently maintained and operated as such.[681]

Both the Act and the regulations provide that the USP Fund will be audited each financial year.[682] In addition, the Act provides that independent auditors shall be appointed by the Board and that the auditor's report shall be presented to the National Assembly and published.[683] In addition, the USP Fund shall maintain a website that includes information relating to the promotion of universal access and universal service in Nigeria and includes posting of the Fund's quarterly reports, the USP Board annual reports, and projects underway.[684]

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675 *Id.* at paragraphs 28 and 29.
676 The Nigerian Communications Act of 2003, Chapter VII, Consumer Affairs, Part 4, paragraph 119.
677 Universal Access and Universal Service Regulations of 2007, paragraph 30.
678 *Id.* at paragraph 73.
679 *Id.* at paragraph 74.
680 *Id.* at paragraph 77.
681 The Nigerian Communications Act of 2003, Chapter VII, Consumer Affairs, Part 4, paragraph 114.
682 Universal Access and Universal Service Regulations of 2007, paragraph 80.
683 The Nigerian Communications Act of 2003, Chapter VII, Consumer Affairs, Part 4, paragraph 114.
684 Universal Access and Universal Service Regulations of 2007, paragraph 81.

The regulations also provide that the USP Board shall prepare and submit an annual report to the National Assembly, through the President, not later than six months after the end of each financial year, including:

- A description of the activities of the USP Board for the preceding year;
- The USP Fund's audited accounts for the year under review together with the respective auditor report;
- The most recent USP Fund Manager's quarterly report;
- The most recently approved Operating Plan; and
- Any other relevant information.[685]

The USP Secretariat must prepare a strategic management plan for approval by the USP Board outlining a vision, mission and objectives for a five year period.[686] The USP Board then approves annual operating plans to address how the USP Fund managers should implement specific USP Programmes and USP Projects.[687] The Strategic Plan for 2007-2011 provides the general framework for the USPF activities to be undertaken during this five-year period and provides the foundation for the annual USPF Operating Plans. The aim of this plan was to compliment the broader Federal Government of Nigeria's policy on national development. The Strategic Plan contains the goals and priorities for the USPF, while the USPF Annual Operating Plans adopted by the USP Board for each year contain more details regarding each of the projects that the USPF will launch for the particular year.

The 2007-2011 Strategic Plan takes into account feedback provided by stakeholders during a public consultative meeting that was held on October 31, 2006 and on written feedback provided to a non-binding USPF consultative paper.

The Strategic Plan provides that the USPF programmes have been developed using a framework that is based on global best practices for ICT for development. Concretely, it states that goals to be met by the interventions of the USPF must be aimed at promoting macro-economic growth with a specific bias to unserved and underserved areas in the communities. Second, for each goal, a set of objectives are developed. These objectives are high level but are typically measurable thus enabling the USPF management to track achievement of the related goals. For each set of objectives, strategies and a portfolio of programmes are developed. Thirdly, specific projects tied to a programme are then designed. For each project a set of Key Performance Indicators (KPIs) are developed. These KPIs allow the development of a score card that will in turn be used to measure and track the performance of the USPF, and the outcome of the measurements and tracking will further be used to inform future planning and decision-making at the macro level.

The regulations contain detailed provisions including provisions on the requirements to use a competitive selection process, as well as minimum subsidy auctions as a preferred process, provisions on the eligibility to bid, publicity of competitive USP project selection processes, criteria for evaluation, procedures for evaluation, award and notification, and provisions relating to disqualification and sanctions.[688]

USP Projects are awarded to bidders though a competitive selection process, which may include minimum subsidy auctions as the preferred process.[689] Service providers that are current Nigerian licensees and potential new entrants to the communications sector are eligible to bid.[690] With respect to universal access, institutions are also considered as recipients of the benefits derived from the USP and could

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685 *Id.* at paragraph 80.
686 *Id.* at paragraph 36.
687 *Id.* at paragraph 37.
688 Universal Access and Universal Service Regulations of 2007, Part VII, paragraphs 48 to 61.
689 Universal Access and Universal Service Regulations of 2007, paragraph 48.
690 *Id.* at paragraph 50.

receive financial support from the USP Fund. These institutions are considered public entities in a designated population that may include, but are not limited to education, health, administrative and other public entities.[691]

The 2007 Regulations also contain detailed provisions on the competitive selection process documents, including requirements for documents, public notice, requests for proposals, bid bonds, as well as the process to grant USP project Agreements and Licences. [692]

6.4.4 Uganda

The 1997 Uganda Communications Act provides for the establishment of a Universal Service Fund (the Rural Communications Development Fund) for the possible financing of the provision of universal services obligations by designated operators and of the Rural Communications Development Policy and Programmes. The Rural Communications Development Fund was established under the Communications (Establishment and Management of the Rural Communications Development Fund) Instrument No. 223 of 2002.

The UCC pools resources into the RCDF by imposing a universal service levy or other supplementary charges on all designated operators.[693] The universal service levy is based on the designated operator's eligible revenue. The eligible revenue of an operator subject to a universal service levy is the gross communications sales revenue for the financial year.[694] An operator can deduct from the sales revenue any amount that is earned from an activity outside of the communications industry.[695]Another source of financing may be a supplementary charge added to interconnection charges.[696] In an effort to ensure that the universal service obligation does not pose a significant or unfair burden on any operator providing universal service, the UCC was mandated to establish a mechanism for sharing the net cost of the universal service obligation between the designated operators.[697]. The RCDF may also receive financing appropriated by the Uganda Parliament through the national budget, as well as donations and grants from development partners, and gifts and loans deemed acceptable to the Minister of ICT and the Finance Minister.[698]

The additional charges may be supplemental interconnection charges. However, the UCC notes that it will also establish a mechanism for sharing the net costs of supporting the universal service obligation between designated operators such that the universal service obligation does not represent an unfair burden to any one operator providing universal service.[699] The cost of universal service is determined based on whether the network is fully developed, or in the process of undergoing expansion or further development.[700]

The RCDF has its own separate account in a bank with direct foreign currency trading rights and the assets of the RCDF may be invested in fixed bank deposits with a bank approved by the UCC, treasury bills and securities of the government, or in other means in accordance with guidelines approved by the UCC.[701]

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691 *Id.* at paragraph 44.
692 Universal Access and Universal Service Regulations of 2007, Part VIII, paragraphs 62 to 69.
693 The Communications (Universal Service) Regulations of 2005, Article 12.
694 *Id.* at Art.12.
695 *Id.* at Art. 12.
696 *Id.* at Art. 12
697 *Id.* at Art.11
698 *Id.* at Art. 11.
699 *Id*. at Art.12.
700 *Id*.
701 Funding and Implementing Universal Access: Innovation and Experience from Uganda, the Uganda Communications Commission, 2005, at p. 44.

An operator can submit a claim for a levy credit in writing to the UCC outlining reasons for a claim of credit and providing an audit report along with the filing. The UCC will review all claims for a levy credit as well as review the audit report and conduct data inquiries to determine if such a claim is accurate.[702]

Procedures for fund administration and project identification are set out clearly in the law. Under the terms of the Uganda Communications Act (the Law), UCC is responsible for the establishment and administration of a fund for rural communications development.[703] The regulations further provide that the UCC shall implement the Rural Communications Development Policy.[704] UCC also monitors the performance of rural licences as well as compliance with their respective licence conditions.[705]

A Board appointed by UCC is responsible for the execution of the strategy for the Rural Communications Development Fund. [706] The Board is responsible to the Commission and manages the Fund in accordance with UCC's approved policies and procedures.[707] In 2002, the UCC adopted a RCDF Manual of Operating Procedures to guide how the Board should manage and administer the fund, including operational guidelines for the Board and bidding principles.[708] In addition, UCC appoints a RCDF manager and has allocated staff.[709] The key role of the RCDF manager and his unit is to manage the RCDF programme and activities, to implement and administer the programme and the related activities, and to manage the finances of the RCDF.[710] The RCDF Manual of Operating Procedures also provides for a minimum basic staff of three, the RCDF manager, one project officer and an assistant project officer. Such staff can be increased depending on the size of the RCDF and its activities. Employees of the RCDF are employees of UCC, but are dedicated to the work of the RCDF.[711] The RCDF may also request that UCC staff be seconded to the RCDF either on a part-time or a limited period full-time basis to assist in specific activities, such as project terms of reference preparation, tender evaluation or monitoring exercises

The RCDF Board's primary responsibilities include:

- Approval of the Fund programme;
- Approval of the operating budget;
- Approval of all staff appointments other than the Fund manager;
- Approval of consulting and outsourcing contracts;
- Approval of all awards of contracts on tendered projects;
- Maintaining the integrity of the Fund's financial activities in accordance with an established code of conduct;
- Regular approval of quarterly reports on direct Fund disbursements for small projects; and
- Monitoring the Fund's quarterly financial reports and annual report.[712]

The Board currently consists of representatives of the UCC, including the Chairman of the Board and the Executive Director, the Uganda Postal sector, Uganda Consumer Protection Association, Uganda

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702 *Id*. at Art.12.
703 The Uganda Communications Act, 1997, at Section 4, aa.
704 The Communications (Universal Service) Regulations of 2005, Article 10.2.
705 Rural Communications Development Policy for Uganda, the Uganda Communications Commission, July 2001, section 3.4.11.
706 *Id.* at section 3.4.1.
707 *Id.* at section 3.4.11.
708 *Id.* at section 3.4.1.
709 Funding and Implementing Universal Access: Innovation and Experience from Uganda, the Uganda Communications Commission, 2005, at p. 42.
710 *Id.* at p. 42.
711 *Id.* at p. 43.
712 *Id.* at p. 43.

Institution of Professional Engineers, the Uganda Institute of Bankers, and the Ministry of ICT.[713] The current term for the Board is 2005 – 2008. To avoid potential conflicts of interest, representatives of the communications industry cannot be owners, shareholders, partners or employees of the licensed communications operators in Uganda.[714]

The responsibilities of the RCDF manager include:

- Review of the RCDF's investment targets, project plans and budget, in accordance with the UCC Policy and Strategy Paper, and the RCDF Manual of Operating Procedures;
- Identification and preparation of rural projects;
- Preparation and maintenance of the Fund's Manpower Plan: refinement of job descriptions, management of the hiring process, and provision of hiring and manpower recommendations to the Board;
- Preparation, monitoring and control of the Fund's operating budget;
- Development of project terms of reference, or participation in the assignment of such tasks to project officers or external consultants;
- Participation in the selection and supervision of consultants to support project implementation;
- Awareness raising activities associated with the rural communications programme, advertising and arrangements for public tender notices;
- Monitoring and following up payments of levies into the Fund by contributors, and acting as the liaison for queries;
- Liaison with operators involved in rural projects;
- Initiating funding proposals to replenish the Fund;
- Budgetary control of the Fund and project resources; and,
- Preparation of progress reports to the executive director of the UCC and the RCDF Board.[715]

RCDF finances are governed in accordance with the rules and operating guidelines established by the RCDF's annual operating budget as well as by the financial policies and regulations of the UCC.[716] The RCDF Manager keeps detailed records of levies, including verified gross revenue of all companies by year, universal service levy due, amounts collected, and amounts outstanding.[717] The RCDF Manager also prepares and presents quarterly statements of the accounts and activities of the RCDF as well as an annual report of all activities, receipts and disbursements. The quarterly statements and annual report are presented to the Board and to the Commission for approval, and made public after approval.[718]

The RCDF is audited every year in accordance with the requirements of the auditor-general. .In addition, the RCDF Board prepares and utilizes detailed regulations to govern the financial activities of the RCDF and such regulations are binding on the RCDF Board and the RCDF Manager.[719]

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713 www.wucc.co.ug/rcdf

714 Funding and Implementing Universal Access: Innovation and Experience from Uganda, the Uganda Communications Commission, 2005, at p. 42.

715 *Id.* at p. 43 and 44.

716 *Id.* at p. 44.

717 *Id.* at p. 44.

718 *Id.* at p. 45.

719 *Id.* at p. 45.

The general principle under the Rural Communications Development Policy is that funds are disbursed to support deployment of basic communications and Internet services to rural areas.[720] Fund disbursements are non-commercial but competitive grants.[721]

Both the 2001 Policy and the 2005 UCC Publication on Funding and Implementing Universal Service, determined that the process for pilot projects is defined on a case-by-case basis, at the discretion of the RCDF Manager and with the approval of the RCDF Board, but these pilot projects represent only a small percentage of the overall RCDF programme. For the remaining programmes, there are five levels of disbursement for RCDF funds and they are defined as follows:

- Level 1: Disbursement of RCDF funds for public telephony projects with potential total subsidy amounts in excess of US$ 100,000 shall be by international open tender, and offer a 10-year service agreement and operating licence to provide telephone and other non-regulated services in the geographically defined areas targeted by the RCDF;
- Level 2: Disbursement of RCDF funds for Internet Points-of-Presence and training projects with potential total subsidy amounts of less than US$ 100,000 shall be through open tender but with invitations published domestically and through a simplified procedure;
- Level 3: At this level, the decision of disbursement for the management or franchising of public telephone or ICT businesses (usually under Levels 4 and 5) is outsourced in order to relief RCDF of its administrative burden. This applies to "rural packages" which are defined as a bulk of more than five access points consisting of public telephony kiosks or telecentres requiring grants of less than US$ 1,000 each[722];
- Level 4: Disbursement of the RCDF funds to institutions seeking to establish "vanguard" ICT and community telecentre projects (e.g., schools, hospitals, associations, NGOs or others). These projects will normally be carried out through open tenders within the respective districts. Key evaluation criteria includes the presentation a business plan, demonstrating contribution in cash or kind, and financial profitability or sustainability following an initial start-up contribution. Small-sized subsidies (defined as those being under US$ 15,000) that present a "sound" business plan may be approved for direct disbursement ;
- Level 5: Disbursement of the RCDF funds to applicants seeking support for one or a small number of investments (five or less) in "rural packages" to enhance signal reception for public telephony kiosks or telecentres, requiring grants equal to or less than US$ 1,000 each. Evaluation criteria includes the presentation of a business plan demonstrating financial profitability or self-sustainability following the start-up contribution for the provision of services in rural communities that do not have good services.[723]

The 2001 Policy also established that the priority of the services to be offered should determine the order in which the funds are distributed.[724]

All RCDF subsidy disbursements are paid out in phases, starting with a down payment upon signature of the service agreement or subsidy contract, and followed by one or more periodic payments linked to the certified completion of investments and the establishment of the project or service.[725]

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720 Rural Communications Development Policy for Uganda, the Uganda Communications Commission, July 2001, Section 3.4.2.

721 *Id.* at section 3.4.2.

722 *Id.* at section 3.4.2.

723 *Id.* at section 3.4.3. and Funding and Implementing Universal Access: Innovation and Experience from Uganda, the Uganda Communications Commission, 2005, at p. 47.

724 Rural Communications Development Policy for Uganda, the Uganda Communications Commission, July 2001, section 3.4.3.

725 Funding and Implementing Universal Access: Innovation and Experience from Uganda, the Uganda Communications Commission, 2005, at p. 56.

According to the 2007 Intelecon Report on Universal Access and Service Funds, as of December 2007, RCDF had financed a selection of the following:

- Telephony in all 154 sub-counties not served by the major operators;
- Special equipment that would extend the reach/coverage of existing telecommunications networks into rural and remote areas;
- Internet points of presence and wireless access systems at district centres;
- A national Internet exchange point (IXP) to facilitate inter-ISP traffic;
- 'Vanguard' Internet access projects for schools, NGOs, small-scale commercial telecentres and Internet cafes at sub-district level; and
- Pilot content creation projects in telephony and Internet areas.[726]

The same report stated that 154 underserved sub counties of Uganda have been divided into 3 universal access areas as follows:

- Universal Access area A comprises 44 underserved sub counties in the East and North-East. Network construction in these sub counties is ongoing and 390 payphones are expected to be installed by the end of 2007;
- Universal Access area B includes 50 underserved sub counties in the Central and North-Central regions. 521 public payphones will be deployed;
- Universal Access area C consists of 60 underserved sub counties in the West and North-West. Network construction is ongoing and 618 payphones are expected to be completed by the end of 2007.[727]

In addition, the report indicates that total project costs for all three regions under the telephony component was estimated at around US$ 11.7 million and the total subsidy awarded was US$ 5.2 million. The subsidy had originally been estimated at US$ 8.6 million. In tendering for 32 internet PoPs, MTN was awarded a US$ 685,000 subsidy for 22 PoPs and UTL was awarded 10 PoPs, for a subsidy of US$ 295,000. The two bids combined amounted to about 73% of the maximum subsidy available for Internet PoPs. [728]

7 Quality of Service

7.1 Background

The 2002 SADC Policy Guidelines on Universal Service provide for the following in relation to Quality of Service:
5.4 Minimum quality of service standards should apply to all providers, such standards include:
5.4.1 Prompt response to any complaints lodged by the customer;
5.4.2 Restoration of service network within a reasonable period of time;
5.4.3 Compensation to the customer for any period of time during which service was interrupted as a result of an operator's fault; and
5.4.4 Availability of free emergency services.

Since the introduction of competition in the telecommunications market, many countries have put in place a regime to ensure that a basic set of telecommunications services are available to all consumers throughout the country. This is known as the principle of Universal Service. Generally speaking, the

[726] Universal Access & Service Funds, Update 2007, Intelecon Research, at p. 17.
[727] *Id.* at p. 17.
[728] *Id.* at p. 17.

concept of Universal Service is designed to ensure that every person can receive a basic set of high quality telecommunications services, no matter where they live, at an affordable price. In many countries, this aim has been achieved by selecting designated 'Universal Service Providers' (USP) and imposing a number of obligations regarding the provision of certain services on them.

As stated at the ITU's 2009 FTRA,[729] it is highly unlikely that universal service and access (UAS) operators shall be subject to effective competitive pressure. As there is in general a constraint on prices to ensure affordability of the universal service and access (e.g. "prix raisonnable"), the universal service and access operators can indeed increase profit by lowering QoS at a retail level.

Therefore, at a minimum, the Quality of Service are clearly identified alongside.

Consequently KPIs with associated targets shall be developed in a given country taking into account inter alia the following:

- The current state of the sector and current levels of UAS in the country;
- The resources available and required for achieving UAS targets;
- Financial sustainability after implementation;
- The feasible quality of service (for uniform quality countrywide);
- The way quality of service has been set/assessed so far;
- Sub-regional regulatory framework (eg; WATRA); and
- Planned periodic reviews in light of technological and market developments

An example of this concept is found in the US Telecommunications Act of 1996, whose goals are:

- to promote the availability of quality services at just, reasonable, and affordable rates
- to increase access to advanced telecommunications services throughout the Nation
- to advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas

It is also part of the European Union's 2002 Universal Service Directive which established the principles of universal service based on the need to maintain a safety net for all citizens to access basic communications services of a reasonable quality and reliability, and at an affordable price, following the liberalisation of the telecommunications sector in 1998. Under the universal service obligations, citizens must be able to access publicly available telephone services, such as directory enquiries, operator assistance and emergency services. Calls to the '112' European emergency number can be made from any EU country free of charge from any telephone, including public payphones. Each country must also make at least one comprehensive telephone directory of all subscribers available to all end-users.

A fundamental requirement of universal service is to provide users on request with a connection to the public telephone network at a fixed location and at an affordable price. The connection provided shall enable end-users to take charge of voice communications, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access, the provision of which may be restricted by Member States to the end-user's primary residence. There are no constraints on the technical means by which the connection is provided.

The national regulatory authorities must set performance targets for undertakings with universal service obligations and monitor compliance with these targets by designated undertakings. Designated

[729] Tera Consultants presentation on Quality of Service and Monitoring at the 10th FTRA (FTRA-2009) in Lusaka, 20-22 mai 2009

undertakings for universal service must publish adequate up-to date information concerning their performance in the provision of universal service, based on quality parameters appearing in Annex III of the US Directive. If quality of service parameters are developed for disabled end-users and consumers, NRAs may specify these additional quality of service standards for assessing the performance of undertakings in relation to services provided to disabled end-users and consumers.

In Ireland, for example, ComReg set binding annual USO quality of service performance targets for fault repair times in May 2008. These annual targets take effect from 1 July 2008 for Eircom and are as follows:

- 80% of fault repairs shall be completed within 2 working days
- 95% of fault repairs shall be completed within 4 working days
- 99.8% of fault repairs shall be completed within 5 working days
- All fault repairs shall be completed within 10 working days

Where the applicant agrees a date for fault repair with Eircom, the annual performance target shall be 95% of fault repairs to be completed by such agreed date.

These targets are part of Eircom's universal service obligation. Quality of service performance in relation to these targets is published quarterly by ComReg by way of an Information Notice and Eircom also publishes performance on its website.

7.2 Key Elements

KEY ELEMENTS TO ILLUSTRATE QOS

- **QoS requirements:** QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing)
- **QoS Monitoring:** Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available
- **Range of Services:** QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)
- **QoS Review:** QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation

7.3 Assessment of National Texts

7.3.1 Summary Chart

Country / Region	QoS requirements	QoS Monitoring	Range of Services	QoS Review
Angola	✓	×	×	×
Botswana	×	×	×	×
Democratic Republic of Congo (DRC)	×	×	×	×
Lesotho	✓	×	×	×
Madagascar	×	×	×	×

Country / Region	QoS requirements	QoS Monitoring	Range of Services	QoS Review
Malawi	✓	✓	×	×
Mauritius	✓	✓	×	×
Mozambique	✓	✓	×	×
Namibia	✓	×	×	×
Seychelles	×	×	×	×
South Africa	✓	×	×	×
Swaziland	✓	×	×	×
United Republic of Tanzania	✓	×	✓	✓
Zambia	✓	×	✓	×
Zimbabwe	×	×	×	×

7.3.1.1 Angola

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The 2001 'Basic Telecommunication Law' provides that the regulator should ensure that licensed operators provide "services in keeping with the standards"[730] it has defined. In the absence of the public availability of operator licences, it is not possible to identify which QoS components have indeed been specified. Elsewhere the "state" is charged with ensuring the "quality" of the "public use telecommunications network"[731] and given the right to intervene if the incumbent commits certain QoS breaches such as "unjustified service stoppage" or services "not restored within a reasonable period" [732]. There are also provisions in the law that ensure the type approval of equipment.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no documentary evidence or other information publicly available to suggest that this in fact occurs.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There is no differentiation of QoS benchmarks in respect of the range of ICT services in the 2001 'Basic Telecommunication Law'. The respective licences may differentiate, but none is publicly available.

730 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 7.2 (d).
731 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 13.1.
732 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Article 22.2 (a) & (b).

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There is no requirement under the 2001 'Basic Telecommunication Law' that QoS components and benchmarks be subject to regular public consultation, and no evidence that such consultations have been undertaken.

7.3.1.2 Botswana

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The 1996 Botswana Telecommunications Act mandates the regulator to ensure consumers are provided with services of sufficient quality[733], but no regulations appear to have been issued in respect of this. There may be QoS requirements specified in the operator licences, but these documents are not publicly available. The web site of the regulator states that "Quality of Service Guidelines for operators" have been developed[734]", but these are not publicly available.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no evidence of such assessment having been undertaken, nor of the results being publicly available.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There is no evidence of QoS benchmarks in existence in respect of any of the relevant services.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There is no requirement for the review, or indeed establishment, of QoS benchmarks under the 1996 Botswana Telecommunications Act, and no evidence that this has been undertaken.

7.3.1.3 Democratic Republic of Congo (DRC)

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

In a 2000 *Arrêté* applicable to fixed and mobile operators, the Ministry ordered that operators must provide a service that is of "international" quality, at the lowest possible cost and accessible to the greatest number of users.[735]

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733 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 17 (2) (b).

734 BTA (nd) 'Registering complaints', Botswana Telecommunications Authority, Gaborone, available online at www.bta.org.bw/pgcontent.php?UID=87.

735 *Arrêté Ministeriel No. 003/CAB/MN/PTT/K/2000 du 31 Janvier 2000 Fixant le Cahier des Charges pour Operateurs en Téléphonie Cellulaire Mobile ou Fixe* (Jan. 31, 2000) at Art. 3.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

In a 2000 *Arrêté* applicable to fixed and mobile operators, the Ministry ordered that operators must provide a service that is of "international" quality, at the lowest possible cost and accessible to the greatest number of users.[736]

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

No such provisions exist in the Law.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

No such provisions exist in the law.

7.3.1.4 Lesotho

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The 2000 Lesotho Communications Authority Act mandates the regulator to "promote the range and quality of telecommunication services"[737]. QoS requirements are specified in some detail in the licence of the fixed line incumbent[738]. The mobile licences, such as that issued to Vodacom, have a similar provision, but makes the detailed specification of QoS parameters the subject of separate regulation, presumably applicable to all mobile licensees[739]. Some QoS components, such as emergency call services, provision of directory information and operator assistance or customer information services, are made separate and specific licence conditions.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no evidence of such assessment having been undertaken, nor of the results being publicly available.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

QoS benchmarks clearly exist in respect of the fixed and mobile licensees, In the absence of publicly available licences relating to Internet, broadband and broadcasting services, it is impossible to say whether applicable QoS benchmarks are in place for those services.

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736 *Arrêté Ministeriel No. 003/CAB/MN/PTT/K/2000 du 31 Janvier 2000 Fixant le Cahier des Charges pour Operateurs en Téléphonie Cellulaire Mobile ou Fixe* (Jan. 31, 2000) at Art. 3.

737 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, Section 15 (2) (c).

738 LTA (2000) 'Fixed Network Operating Licence Granted by Lesotho Telecommunications Authority to Tele-Com Lesotho (Pty) Ltd on 2000-11-01', Lesotho Telecommunications Authority, Maseru, Condition 16.

739 LTA (2001) 'Licence Granted by the Lesotho Telecommunications Authority to Vodacom Lesotho (Pty) Ltd for the Operation of Mobile Systems and the Provision of Mobile Services on 2001-10-11', Lesotho Telecommunications Authority, Maseru, Condition 12.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There is no evidence that QoS requirements are regularly and publicly reviewed.

7.3.1.5 Madagascar

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The Universal Service Decree (Decree 2006-616) provides that minimal QoS rules shall be adopted by OMERT, and that such rules shall take account of ITU standardisation recommendations as well as of the particular circumstances of Madagascar and of its networks.[740] The Decree limits such rules to the telephone service.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

Article 7 of the law provides that financial contributions to universal access and service, as well as the provision of universal access and service and its tariffs and QoS shall be monitored regularly[741]

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

The 2006 Universal Service Decree limits the reference to QoS to telephony[742].

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

No such provisions are in the Law or Decree.

7.3.1.6 Malawi

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The need to "ensure that quality of service meets acceptable international standards" was identified in the 1998 Communications Sector Policy[743]. Presumably detailed QoS parameters are specified in the operator licences, as can be seen from the QoS audits, but no licences are readily publicly available to confirm this. Pending legislation currently requires the regulator to "prescribe the necessary quality of service parameters"[744].

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740 Decree 2006-616, Article 3.

741 Loi 2005-023, Article 7, 1 (i)

742 Decree 2006-616, Article 3.

743 Malawi (1998) 'Communications Sector Policy Statement', Ministry of Information, Republic of Malawi, Lilongwe , August 1998, p 3.

744 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 25.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

Pending legislation currently provides for the regulator to "measure compliance with the prescribed quality of service parameters" and to "audit the quality of service reports submitted by licensees"[745].

The regulator already undertakes QoS audits on a quarterly basis in respect of the operators, and the results of these QoS audits are made available publicly[746].

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

The QoS audit reports available from the web site of the regulator cover only fixed and mobile operators. There is no evidence of QoS audits having been undertaken in respect of Internet, broadband, or broadcasting.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There is no evidence of that QoS parameters are subject to periodic review involving stakeholders, nor is this currently provided for in terms of pending legislation[747].

7.3.1.7 Mauritius

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The 2001 Information And Communication Technologies Bill provides that the Authority shall provide economic and technical monitoring of the information and communication industry in accordance with recognized international standard practices, protocols and having regard to the convergence of technology, and establish, for public operators, performance standards and linkage standards in relation to the provision of international and local telephone services, and monitor compliance with both of those standards."[748]

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

The 2001 Information And Communication Technologies Bill provides that the Authority shall provide economic and technical monitoring of the information and communication industry in accordance with recognized international standard practices, protocols and having regard to the convergence of technology, and establish, for public operators, performance standards and linkage standards in relation to the provision of international and local telephone services, and monitor compliance with both of those standards."[749]

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745 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 25.

746 See, for example: 'Quality of Service Report for Fixed Network Operators (Jan – March 2010)', Malawi Communications Regulatory Authority, Lilongwe, available online at www.macra.org.mw/admin/publication/uploadPublication/QoS%20Press%20Release%20-%20MTL%20(Q1%20final).pdf

747 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe, section 25.

748 Mauritius 2001 Information and Communications Act, Part III, Article 18.1.

749 Mauritius 2001 Information and Communications Act, Part III, Article 18.1.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There are no such provisions in the law apart from the general provisions included in Section 18 of the Act.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There are no such provisions in the law.

7.3.1.8 Mozambique

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

Article 39 of the law provides that universal service obligations must fulfilled by providing affordable services which meet the quality of service requirements specified it the licences.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

Operators are required to submit reports to the regulator on the use of funds [750]– no provisions are made for QoS reporting.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

Article 39 of the law provides that universal service obligations must fulfilled by providing affordable services which meet the quality of service requirements specified in the licences.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There are no such provisions in the law.

7.3.1.9 Namibia

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The 2009 Communications Act implies that QoS standards will be specified in the operator licences by providing for "compensation" to customers in the event that they are breached[751]. There is no detailed specification of QoS components in the law. With licences not readily publicly available, it is unclear what QoS parameters they contain.

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750 Decree 69/2006, Article 16.

751 Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 38 (10) (g).

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no provision for specific QoS monitoring under the 2009 Communications Act, and no evidence that such monitoring indeed takes place.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There are no QoS benchmarks publicly available.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There is no requirement in terms of the 2009 Communications Act that QoS parameters be regularly reviewed with stakeholders, and no evidence that this has been done.

7.3.1.10 Seychelles

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

There are no such provisions in the Act.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There are no such provisions in the Act.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There are no such provisions in the Act.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There are no such provisions in the Act.

7.3.1.11 South Africa

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The 2006 Electronic Communications Act makes no specific provision for the imposition of QoS requirements on licensees either through regulation or via the licence itself. In practice QoS parameters are included in the licences, where they do include specific components.[752]

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[752] See, for example : ICASA (2002) 'Licence to provide a National Mobile Cellular Telecommunication Service, Issued to Vodacom (Pty) Ltd in terms of Section 37(1) of the Telecommunications Act, No 103 Of 1996', Independent Communications Authority of South Africa, Johannesburg

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no evidence of formal independent assessment of QoS benchmarks or of the publication of the results.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There is no evidence of the existence of any standard set of QoS benchmarks in respect of any of the relevant services.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

The 2006 Electronic Communications Act specifies no requirement for a public review process regarding QoS parameters, nor is there any evidence that one has taken place

7.3.1.12 Swaziland

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

Section 5 of the [DRAFT?] Electronic Communications Act defines universal service as the minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price as may be defined under regulations made under the law.

Section 19 also provides that a licensee holding a licence for the provision of publicly available electronic communications services is obliged to provide such services efficiently, complying with the standards for quality generally accepted in the industry or as may from time to time be specified by the Commission.

Section 33 also provides that the Commission, in consultation with the Minister, shall develop annual objectives with the purpose of ensuring that the services under the universal service obligation are made available, at the quality specified, to all end-users in the Kingdom of Swaziland, including those with disabilities, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

Section 34 finally provides that the Commission may issue decisions, guidelines or recommend regulations to the Minister, including provisions regarding the quality of the services, making further specifications thereto.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There are no such provisions in the law.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There are no such provisions in the law.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There are no such provisions in the law.

7.3.1.13 United Republic of Tanzania

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

Detailed QoS parameters are set out by regulation in respect of each category of licence issued by the regulator. [753]

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no evidence that QoS compliance is regularly or independently assessed or the results published.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

Detailed QoS parameters are set out by regulation in respect of each category of licence issued by the regulator within the converged licensing framework.[754]

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

The 2005 Quality of Service) Regulations specify that the regulator "may review the quality of services parameters from time to time','[755] but there is no evidence of such a review having been conducted or of stakeholders having been consulted.

7.3.1.14 Zambia

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

The 2009 ICT Act requires all operators to "meet such minimum standards of quality of service as the Authority may specify and publish"[756]. There is no evidence of regulations on QoS having been published, but some considerable detail on QoS is provided on the web site of the regulator[757].

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753 TCRA (2005) 'Tanzania Communications Services (Quality of Service) Regulations 2005', Government Notice No 267, Tanzania Communications Regulatory Authority, Dar es Salaam, 9 September 2005

754 TCRA (2005) 'Tanzania Communications Services (Quality of Service) Regulations 2005', Government Notice No 267, Tanzania Communications Regulatory Authority, Dar es Salaam, 9 September 2005

755 TCRA (2005) 'Tanzania Communications Services (Quality of Service) Regulations 2005', Government Notice No 267, Tanzania Communications Regulatory Authority, Dar es Salaam, 9 September 2005, Section 14.

756 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Section 67 (1) (a).

757 ZICTA (nd) 'What to Know About Quality of Service', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/consumer-protection/quality-of-service.html.

The standard terms and conditions for both network and service licences require licensees to "comply with and abide by the... guidelines published by the Authority or any international standard to which the licence requires adherence"[758].

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no evidence that operator compliance with QoS benchmarks and standards is regularly and independently assessed, or that the results are publicly available.

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There is no evidence of regulations on QoS, which would in all likelihood officially specify this, having been published. The web site of the regulator provides consumers with information about a range of QoS parameters covering fixed and mobile telephony and Internet access[759].

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There is no requirement that QoS parameters be publicly reviewed in the 2009 ICT Act.

7.3.1.15 Zimbabwe

QoS requirements: ***QoS requirements are specified in licences or by regulation, and include clearly specified QoS components (including those related to supply of services, customer complaints and redress, faults, service quality, provision of designated USO services including free emergency calls, billing).***

Although the law commits to ensuring that consumers are provided with "quality" services[760] and one of the objectives of both USFs is the "maintenance of high standards of quality in the provision of such services"[761], no QoS components are specified, nor is a requirement to include QoS parameters in operator licences made mandatory. Licences are not publicly available to determine if indeed they specify any QoS requirements.

QoS Monitoring: ***Operator compliance with QoS benchmarks and standards is regularly and independently assessed, and the results made publicly available.***

There is no evidence that QoS compliance is assessed and the results made publicly available.

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758 ZICTA (nd) 'Network Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/network-licence.html & ZICTA (nd) 'Service Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/service-licence.html, Clauses 10 and 8 respectively.

759 ZICTA (nd) 'What to Know About Quality of Service', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/consumer-protection/quality-of-service.html.

760 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 4 (1) (g) & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 3 (2) (i).

761 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 74 (a) & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 30 (a).

Range of Services: ***QoS benchmarks exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)***

There are no QoS benchmarks in respect of any services specified in the law. Operator licences are not publicly available to determine if they specify QoS benchmarks in respect of any of the relevant additional services.

QoS Review: ***QoS components and benchmarks are regularly reviewed through a process of public, stakeholder consultation.***

There is no requirement in the law for QoS parameters to be periodically assessed in conjunction with stakeholders'. Nor is there any evidence of such a process having been undertaken.

7.4 International Case Studies

7.4.1 EU

When voice telephony was liberalised in 1998 to complete the overall liberalisation of the telecommunications sector, it was agreed to maintain a safety net to ensure that a set of basic telecommunication services would always be available at a determined quality and an affordable price, even if the market would not provide it. This set of basic services was called 'universal service'. With the 1999 review of the regulatory framework, it was decided to maintain the universal service and to update it to include a minimum speed connection to the Internet. The basic principles of universal service are determined by Directive 2002/22/EC on Universal Service and Users' rights. The Universal Service Directive is part of the 2002 "Telecoms Package" that was aimed at reformulating the regulatory framework for telecommunications and to make the electronic communications sector more competitive.

The 2002 Directive continues to define universal service as the "minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition". Within this context, Member States must ensure that the electronic communications services detailed in the Directive are made available to all users in their territory, regardless of their geographical location, at a specified quality level and an affordable price. A fundamental requirement of universal service is to provide users on request with a connection to the public telephone network at a fixed location and at an affordable price. The connection provided shall enable end-users to take charge of voice communications, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access, the provision of which may be restricted by Member States to the end-user's primary residence. There are no constraints on the technical means by which the connection is provided.

The national regulatory authorities must set performance targets for undertakings with universal service obligations and monitor compliance with these targets by designated undertakings. Designated undertakings for universal service must publish adequate up-to date information concerning their performance in the provision of universal service, based on quality parameters appearing in Annex III of the US Directive. If quality of service parameters are developed for disabled end-users and consumers, NRAs may specify these additional quality of service standards for assessing the performance of undertakings in relation to services provided to disabled end-users and consumers.

The 2002 Universal Service Directive also requires the USP to publish adequate and up to date information on its performance in respect of the USO. The information is to be based on the quality of service parameters, definitions and measurement methods which are set out in the EU Directive. These, in turn are based on European Telecommunications Standards Institute (ETSI) standards which provide precise detail on definitions and methodologies and have been used in recording the performance

indicators. Where the ETSI standards do not cover an aspect of the USO, Member specific indicators have been developed to ensure that the performance is measured.

The European Commission closely monitors the implementation of universal service obligations in all Member States. If a Member State does not respect EU rules, the European Commission can open an infringement proceeding against it to remedy the situation. This can eventually lead to the case being referred to the European Court of Justice (ECJ).

The Commission has already launched numerous infringement proceedings on issues related to universal service. 11 of those were initiated due to non-availability of comprehensive directory and directory enquiry services. All but one of these Member States (Portugal) has started to provide these services after the cases were launched.

The principle of non-discrimination when choosing the operators to provide universal service has also been addressed by the Commission. Infringements were launched against France, Hungary, Finland, Portugal and Spain.

Infringement proceedings against Belgium and Spain were also launched to address the lack of conformity with the rules on financing universal service.

An example of universal service monitoring in an EU Member State is Ireland, where the Commission for Communications Regulation (ComReg) has been mandated to be responsible for the regulation of the electronic communications sector in accordance with national and EU legislation. Among ComReg's functions in this regard is to determine the scope of the Universal Service Obligation ("USO") for the Irish market and decide which undertaking(s) are designated as the Universal Service Provider(s) ("USP"). In July 2003, Eircom was designated as the Universal Service Provider (USP) for a period of three years. Following a public consultation, in July 2006, Eircom was again designated as the USP for a period to end June 2010.

Regulation 10 of the Universal Service Regulations requires the USP to publish information on its performance in relation to the provision of the Universal Service Obligation (USO). In exercise of ComReg's general powers to publish information under regulation 17 of the Framework Regulations, and in order to provide increased transparency regarding the fulfilment of the USO, ComReg decided to publish the performance indicators simultaneously with Eircom and to update the data on a quarterly basis. ComReg considered that such publication would enhance transparency and help to inform debate regarding related matters.

A Response to Consultation on USO Quality of Service Performance Targets, (ComReg Decision No D02/08, ComReg Document No 08/37), was published on 28 May 2008 setting legally binding performance targets for the provisioning of connections, the rate of fault occurrence and fault repair timescales. These legally binding targets took effect for Eircom, as designated universal service provider, from 1 July 2008, and are subject to enforcement from 30 June 2009.

These legally binding targets were set with the aim of providing an incentive for Eircom to improve its quality of service performance for the benefit of its consumers and stakeholders.

Eircom was designated as the Universal Service Provider (USP) in July 2003 for a 3 year period. Following a public consultation, in July 2006, Eircom was again designated as USP for a period to end June 2010.

The performance indicators published by ComReg address the following aspects of the Universal Service Obligation:

Direct Access Public Service Telephone Network (PSTN) Provision: This section deals with the USP's record in completing fixed line installations. This section provides information on the percentage of installations which were completed by the date agreed with the customer. Also measured is the time

taken for 95% and 99% of all installations in elapsed days. Both of these metrics are as specified in the ETSI standard.

In September 2005, ComReg issued as guidelines, performance targets for installations. The distribution of actual installations against the time periods are also set out in the performance targets.

Direct Access PSTN Repair: This section deals with how many line faults were reported to Eircom and how many were fixed during the reporting period. All faulty lines that are reported in the specified quarterly period are included and reported as a percentage of total installed lines. It are noted that fault reports which are subsequently found not to be justified (e.g. If a customer reports a fault and it turns out not to be a fault) are excluded i.e. the data reported here represents actual faults.

In terms of reporting on repair rates, the ETSI standard calls for the measurement in working hours for the fastest 80% and 95% of fault repairs which have been completed.

Functional Internet Access (FIA): Broadband access does not fall within the scope of the USO with the Directive making clear that the requirement is for a single narrowband connection. In September 2005, ComReg specified a target data rate of 28.8 kbps (kilobits per second) as the minimum data rate which could be considered as capable of delivering functional internet access. Also issued by way of guidance was a performance target of 94% of lines to be capable of the target data speed by June 2006.

Public Payphones: This section provides figures on the numbers of USO payphones provided and the proportion in full working order during the reporting period.

Affordability of Tariffs: This section provides information on the numbers of bill complaints and records the availability of the Vulnerable Users Scheme and support under the Department of Social and Family Affairs (DSFA) household benefit scheme.

Specific Measures for Disabled Users: This section records the services and equipment available for people with disabilities.

7.4.2 Australia

Monitoring and reporting are seen as important elements within the telecommunications regulatory framework in Australia, particularly in an increasingly competitive market, where performance data are considered to be elements which can assist consumers to make informed choices about competing telephone companies. Monitoring and reporting are also used to check that industry is providing levels of service that meet community expectations, and to identify the need for remedial action where this is not the case.

The independent industry regulator, the Australian Communications and Media Authority (ACMA), has primary responsibility for monitoring and reporting on the performance of telephone companies. This responsibility arises from its general functions under section 8 of the Australian Communications and Media Authority Act 2005 (ACMA Act) and specific provisions of section 105 of the Telecommunications Act 1997.

As part of its monitoring and reporting role, the ACMA publishes the Quarterly Telecommunications Performance Data. Results are published three months after the end of every quarter.

The quarterly reports on telephone companies' compliance, in percentage terms, against the Customer Service Guarantee (CSG) requirements in relation to telephone connections, fault repair, appointment keeping and payments. The reports also cover call centre performance, complaints, payphone availability and mobile network call congestion levels and drop-out rates. Special reports on current topics of interest are also included.

In accordance with section 105 of the Telecommunications Act 1997, the ACMA publishes performance data on an annual basis in its Telecommunications Performance Report. The report is provided to the Minister for Broadband, Communications and the Digital Economy and is tabled annually in each House of Parliament as required under subsection 105(7) of the Act.

In contrast to the ACMA quarterly bulletins, the section 105 report looks at industry performance much more broadly and over the full year. The section 105 report covers industry participants, codes and practices and developments, pricing, Customer Service Guarantee compliance, Universal Service Obligation (USO) performance, mobile services, payphones, internet and pay TV issues.

In terms of Universal Service Obligations, Telstra has been designated as a Universal service provider. Within the context of its obligations, Telstra has published a Universal service Obligation Standard Marketing Plan,[762] as approved by the ACMA, in which it specifies its quality targets. Telstra thus undertakes that it will ensure that each standard telephone service supplied as part of its universal service obligation performs according to a technical grade of service quality, in line with appropriate standards or codes of practice on network end-to-end performance. Telstra also provides that it will ensure that each standard telephone service supplied as part of its universal service obligation is maintained consistent with applicable standards or codes of practice on network performance.

Telstra will maintain records of Priority Customers and report to the ACMA in accordance with the record and reporting regime outlined in Telstra's Carrier Licence Conditions.

Telstra implemented the Network Reliability Framework (the Framework) on 1 January 2003. The purpose of the Framework is to improve the reliability of Telstra's services at both the network and individual service levels. Under the Framework, Telstra is required to provide data to the Australian

Communications and Media Authority (ACMA) on the performance of its Customer Access Network at three different levels:

- level 1 – Geographical Area Level;
- level 2 – Telephone Exchange Service Area Level; and
- level 3 – Individual Service Level.

Details can be found on the Telstra web site[763] or in written format by request from the ACMA.

Service quality relating to the standard telephone service (both technical performance and customer assessment) is reported in aggregate and the results are publicly available. The service is monitored on a regular and timely basis through established industry mechanisms, including Telstra's Quarterly Service Performance Report, reports produced by the ACMA, the Telecommunications Industry Ombudsman, and industry monitored conformance to standards or codes of practice. The ACMA is required to monitor and review Telstra's compliance with its obligations set out in this Plan. Over a period of time the relevance of performance indicators set out in this plan will be reviewed.

Reporting measures cover the main categories of customer concern affecting the relevant areas of service (including provision or restoration of service, PSTN, operator assisted services and their respective customer assessment measures).

762 Available at: www.telstra.com.au/universalservice/docs/uso_smp.pdf
763 See www.telstra.com.au/servicereports/n_reliability.cfm.

7.4.3 USA[764]

In the Telecommunications Act of 1996 (1996 Act) Congress directed the Federal Communications Commission (FCC) and states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans including low-income consumers, eligible schools and libraries, and rural health care providers. Congress also specified that universal service support "are explicit," and that, with respect to federal universal service support, "every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanisms established by the FCC to preserve and advance universal service."

Prior to the 1996 Act, the FCC relied on Section 1 of the Communications Act of 1934 as the touchstone for virtually all major universal service policy discussions. The principles in Section 254(b) of the 1996 Act solidified the FCC's responsibilities under Section 1, "to make available, so far as possible, to all the people of the United States without discrimination on the basis of race, colour, religion, national origin, or sex a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."

The goals of Universal Service, as mandated by the 1996 Act, are to:

- Promote the availability of quality services at just, reasonable and affordable rates for all consumers
- Increase nationwide access to advanced telecommunications services
- Advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas
- Increase access to telecommunications and advanced services in schools, libraries and rural health care facilities
- Provide equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programmes

The Federal Communications Commission (FCC) established four programmes to fulfil these goals. They are:

- The High-Cost programme
- The Low Income programme, including initiatives for Native Americans
- The Schools and Libraries programme, commonly referred to as E-rate
- The Rural Health Care programme

These programmes are funded by the Universal Service Fund. Telecommunications providers must contribute to the fund through an assessment on their interstate and international revenues. The Commission appointed the Universal Service Administrative Company (USAC) to administer the four programmes and the Universal Service Fund.

At the end of 1983, anticipating AT&T's imminent divestiture of its local operating companies, the Federal Communications Commission directed the Common Carrier Bureau to establish a monitoring programme that would provide a basis for detecting adverse trends in Bell operating company network service quality. Subsequently, the Bureau modified the service quality reporting requirements to reduce unnecessary paperwork and to ensure that needed information would be provided in a uniform format.

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764 Source: www.fcc.gov/Daily_Releases/Daily_Business/2010/db1230/DOC-303886A11.pdf

The FCC therefore does not impose service quality standards on communications common carriers, but annually monitors quality of service data submitted by incumbent local exchange carriers that are regulated as price-cap carriers.

The FCC summarizes these data for inclusion in its Universal Service Monitoring Report and publication in its Annual Report on Quality of Service Trends. Key company performance indicators in the Universal Service Monitoring Report include objective indicators of installation and maintenance performance, switch outages and trunk blocking performance. The tables also present data on customer perceptions of service, as well as the level of consumer complaints.

In any given year, the quality of service summary[765] typically includes data revisions filed with the Commission after the cut-off date for data included in the Monitoring Report. The quality of service summary also tracks changes in key service quality indicators over multiple years, and uses statistical methods to determine the significance of those changes; discusses the quality and reliability of the data; and provides information regarding proper data interpretation.

7.4.4 Uganda

The 2005 Universal Service Regulations repeatedly refer to the need for the availability of affordable and quality services throughout the country, and include the concept of quality service in the definition of universal service, which states that "universal services" means a defined minimum set of services of specified quality which is available to all users independent of their geographical location, and in the light of specific national conditions, at an affordable price.[766]

The Regulations provide specific criteria for the Commission to set specific targets for designated universal operators for the supply-time and quality-of-service , including:

(a) supply time for initial network connection;

(b) fault rate per connection;

(c) fault repair time;

(d) dial tone delay;

(e) call set up delay;

(f) transmission quality statistics;

(g) response time for operator services;

(h) billing accuracy; and

(i) transmission times for postal items.[767]

8 Consumer policy

8.1 Background

The 2002 SADC UAS policy guidelines provide for the following in relation to consumer protection:
5.5 Customer satisfaction are an aim of universal access/service therefore:
5.5.1 Each operator will be required to establish a customer satisfaction organisational unit where customers will lodge service or tariff complaints; and

765 The Annual Reports can be found on the Commission's website at www.fcc.gov/wcb/iatd/stats.html
766 Communications (Universal Service)Regulations, 2005, Section 4.
767 Communications (Universal Service) Regulations, 2005, Section 5.

5.5.2 The regulatory authority should ensure that all operators meet customer satisfaction goals.[768].

The 2008 OECD Policy Guidance for Protecting and Empowering Consumers in Communication Services recognized that since the late 1990s, the communications sector has been subject to transformation with the development of competition and the diffusion of a range of new technologies and services. Such competition has brought significant benefits to consumers with falling prices, better quality of services, a wider choice of service providers and access to new services, on the one hand, and some costs on the other hand as consumers have been faced with more complex choices, a range of offers sometimes with unclear pricing structures and contracts which at times limited the flexibility of consumers.[769]

The Guidelines recognise that as the use of communication services has increased, more emphasis is being placed on reviewing consumer policy by supplementing the range of consumer measures to provide better protection, more flexibility in the market for consumers, and better access to information.

It is in this context that OECD countries have developed a set of policy principles for ensuring that consumer interests in communication services are adequately protected. The Guidelines are specifically aimed at:

- Encouraging the development of services that provide consumers with a range of quality products at competitive prices.
- Informing consumers about potential security and privacy risks in using communication services and available measures to limit these risks.
- Enhancing consumer awareness of the availability and benefits of available services and suppliers, and consumer rights.
- Improving the transparency of contracts and ensuring that they are not unfair to consumers.
- Minimising the costs associated with switching services.
- Facilitating timely, inexpensive, easy to use, effective and fair settlement of consumer complaints.
- Ensuring that services be widely accessible to everyone, and, in particular, disadvantaged and vulnerable consumers.[770]

In the ICT sector, the development of consumer protection regulations is common and is directed at establishing operators' obligations regarding their customers. Operators' obligations include, but are not limited to, items such as: timely and accurate billing; customer contract policies and procedures; protection of consumer privacy; terms of reference for suspension of service; and procedures necessary to respond to and resolve consumer complaints.

Key factors to consider when reviewing consumer protection issues are:

- Does the legislation address ICT sector-specific consumer protection issues?
- Does this legislation clearly define consumers' and operators' rights and obligations or establish processes for consumer dispute resolution?
- Are consumer protection functions and processes for their enforcement clearly specified in the law or regulation?

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768 TRASA (2002) 'Policy Guidelines on Universal Access / Service for Telecommunications Services in SADC', Telecommunications Regulators Association of Southern Africa, Gaborone, p 6.

769 OECD (2008), OECD Policy Guidance for Protecting and Empowering Consumers in Communication Services, Seoul, pg. 2.

770 OECD (2008), OECD Policy Guidance for Protecting and Empowering Consumers in Communication Services, Seoul, pg. 3.

- What are the possible sanctions/liabilities for breaching consumer protection obligations in the ICT sector? Have they been imposed in the recent past?
- What authority controls consumer protection related issues in the ICT sector (*e.g.*, regulator, consumer protection agency, a self-regulation body, other)?
- Have specific consumer protection regulations been adopted for the ICT sector (*e.g.*, consumer and operator rights and obligations, consumer dispute resolution mechanisms, etc.)?
- What are the sanctions applicable to operators found to have breached consumer protection obligations (*e.g.*, fines, damage awards, reimbursement/credits for monies overpaid, etc.)?
- Does the law mandate the use of standard form contracts for the provision of services?
- Do ICT service contracts require prior approval from the regulator or another authority?
- If so, is there a clearly defined process to obtain such approval?

More and more countries are defining consumer protection measures in relation to universal service in particular. Important within this context is to have clear procedures which are widely published and easily available to consumers.

Article 20 (2) of the European Union's 2002 Universal Service Directive, for example, provides that
2. Member States shall ensure that, where subscribing to services providing connection and/or access to the public telephone network, consumers have a right to a contract with an undertaking or undertakings providing such services. The contract shall specify at least:

(a) the identity and address of the supplier;
(b) services provided, the service quality levels offered, as well as the time for the initial connection;
(c) the types of maintenance service offered;
(d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
(e) the duration of the contract, the conditions for renewal and termination of services and of the contract;(…)

Member States may extend these obligations to cover other end-users.

The Universal Service Directive also provides that:
2. Member States shall ensure that, where subscribing to services providing connection and/or access to the public telephone network, consumers have a right to a contract with an undertaking or undertakings providing such services. The contract shall specify at least:
(…)
(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
(g) the method of initiating procedures for settlement of disputes in accordance with Article 34.[771]
1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes, involving consumers, relating to issues covered by this Directive. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users."[772]

In Ireland , for example, ComReg has put in place a regime to ensure that a basic set of telecommunications services are available to all consumers throughout the country. A number of

[771] 2002 Universal Service Directive, Article 20 (2)
[772] 2002 Universal Service Directive, Article 34 (1)

consumer protection measures have also been introduced which are designed to protect consumers when dealing with service providers.

Australia is also a country that clearly incorporated consumer policy within its universal service policy. Section 9 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 states that the object of the USO is to ensure that:

- the standard telephone service; and
- payphones; and
- prescribed carriage services; and
- digital data services are reasonably accessible to all Australians on an equitable basis, wherever they reside or carry on business.

The section also states that the USO are fulfilled as economically as possible and that any losses involved in its provision are shared among carriers.

The Act gives the Minister the power to designate a universal service provider with primary responsibility for delivery of the USO.

The Telecommunications (Consumer Protection and Service Standards) Act 1999 restated in a single Act the range of safeguards for telecommunications consumers that were contained in the Telecommunications Act 1997 and the Telstra Corporation Act 1991. These safeguards include:

- The Universal Service regime;
- The National Relay Service (this provides the deaf or hearing impaired with access to a standard telephone service). In June 1998 it was announced that the contract for provision of the National Relay Service was awarded to the Australian Communication Exchange (ACE).
- The Customer Service Guarantee (CSG). The Customer Service Guarantee was introduced by the Telstra (Dilution of Public Ownership) Act 1996 as an additional safeguard for consumers. The Customer Service Guarantee provisions were re-enacted in the Telecommunications Act 1997 and essentially provide for the Australian Communications Authority (ACA) to determine performance standards for carriers. These standards relate to such matters as connection and fault rectification times and the keeping of appointments with customers. If a carrier fails to meet a standard then it is liable to pay compensation to the customer in accordance with a scale determined by the ACA.
- The Telecommunications Industry Ombudsman (TIO) scheme. This requires providers to enter into a scheme which allows the TIO to investigate and make determinations about complaints by consumers.
- The price control arrangements for Telstra and continued access to untimed local calls.

The Telecommunications Legislation Amendment Act 1999 repealed the provisions of the Telecommunications Act 1997 and the Telstra Corporation Act 1991 that were re-enacted in the Telecommunications (Consumer Protection and Service Standards) Act 1999. It also contained provisions to promote competition in the telecommunications sector and to require the Australian Competition and Consumer Commission (ACCC) to monitor and report on telecommunications charges and Telstra's compliance with price control arrangements.

Furthermore, on 29 June, 2000, the Government introduced the Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No 2) 2000 and the Telecommunications (Universal Service Levy) Amendment Bill 2000 to implement policy decisions announced on 23 March 2000.

In September 1999 the ACA began an investigation into Telstra's performance under the Customer Service Guarantee and the USO. This was prompted by Telstra's poor performance in connecting new services for certain customers. The report identified a number of factors responsible for this performance, including:

- inadequate infrastructure;
- deficient records; and
- poor work practices and procedures.

8.2 Key Issues

KEY ELEMENTS TO ILLUSTRATE INCLUSION OF CONSUMER PROTECTION POLICY

- **Charters:** Consumer protection requirements (eg customer service charters) are specified, publicised and binding
- **Channels:** Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures
- **Information:** Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation
- **Surveys:** Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available
- **Scope:** Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting)
- **Review:** Consumer protection criteria and requirements are subject to regular review with stakeholder participation

8.3 Assessment of National Texts

8.3.1 Summary Chart

Country / Region	Charters	Channels	Information	Surveys	Scope	Review
Angola	×	×	×	×	×	×
Botswana	✓	✓	✓	×	×	×
Democratic Republic of Congo (DRC)	×	×	×	×	×	×
Lesotho	✓	✓	✓	×	×	×
Madagascar	×	×	×	×	×	×
Malawi	×	×	×	×	×	×
Mauritius	×	×	×	×	×	×
Mozambique	×	×	×	×	×	×
Namibia	✓	×	×	×	×	×
Seychelles	×	×	×	×	×	×
South Africa	✓	✓	×	×	✓	×
Swaziland	×	×	×	×	×	×
United Republic of Tanzania	✓	✓	✓	×	×	×
Zambia	✓	✓	✓	×	×	×
Zimbabwe	×	✓	✓	×	×	×

8.3.1.1 Angola

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

There are no specific consumer protection requirements in the 2001 'Basic Telecommunication Law', which only lists "safeguarding the interests of... users" and protecting "the right to privacy"[773] (which elsewhere can be seen to include "confidentiality of messages"[774]) as regulatory principles. Government is elsewhere required to "intervene... when situations that severely affect the rights of its subscribers occur"[775].

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There is no specific provision to this effect in the 2001 'Basic Telecommunication Law'. Operator licences are not publicly available, and so there is no documentary evidence of any such provisions contained therein.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There is no such requirement in the 2001 'Basic Telecommunication Law'. The respective licences might specify, but none is publicly available.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There is no such requirement under the 2001 'Basic Telecommunication Law' that QoS components and benchmarks be subject to regular public consultation, and no evidence t, and no evidence that any such survey has been undertaken by the regulator.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

There is no specification to this effect in the 2001 'Basic Telecommunication Law'.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There is no requirement to this effect under the 2001 'Basic Telecommunication Law' and no evidence of any such reviews having been undertaken.

8.3.1.2 Botswana

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

While the 1996 Botswana Telecommunications Act mandates the regulator to "promote the interests of consumers, purchasers and other users of telecommunication services"[776], no specific consumer protection requirements appear to have been established or published. The web site of the regulator

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773 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 15.2 (a) & (b).
774 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 26.
775 Angola (2001) 'Basic Telecommunication Law', Republic of Angola, Luanda – Articles 22.1.
776 Botswana (1996) 'Chapter 72:03 Telecommunications' Republic of Botswana, Gaborone, Article 17 (2) (b).

states that all public telecommunication licensees are required to have "procedure designed to address complaints from the public" lodged for approval with the regulator[777].

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There are no specific requirements covering this issue in the 1996 Botswana Telecommunications Act. The web site of the regulator clearly sets out a consumer complaints procedure, which has the regulator as the referee of last resort, stating that "Consumers should first explore and exhaust all possible channels of remedy available within the operator(s) before any reference to the BTA[778]".

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There is no provision for this in the 1996 Botswana Telecommunications Act. There may be such requirements in operator licences, but these are not publicly available. The web site of the regulator states that all public telecommunication licensees are required to notify the public of the "procedure designed to address complaints[779]".

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

This is not required in terms of the 1996 Botswana Telecommunications Act, and there is no evidence of the regulator having undertaken any such surveys or having published the results.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

This is not provided for in terms of the 1996 Botswana Telecommunications Act and not specifically addressed by the regulator.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

This is not required under the 1996 Botswana Telecommunications Act and there is no evidence of any such reviews having been undertaken.

8.3.1.3 Democratic Republic of Congo (DRC)

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

Article 7 of the Telecommunications law provides that all operators must treat all consumers equally.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There are no provisions in the law on channels for consumer complaints.

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777 BTA (nd) 'Complaint Handling Procedures', Botswana Telecommunications Authority, Gaborone, available online at www.bta.org.bw/docs/documents/Complaints%20Handling%20Procedures.pdf.

778 BTA (nd) 'Registering complaints', Botswana Telecommunications Authority, Gaborone, available online at www.bta.org.bw/pgcontent.php?UID=87.

779 BTA (nd) 'Complaint Handling Procedures', Botswana Telecommunications Authority, Gaborone, available online at www.bta.org.bw/docs/documents/Complaints%20Handling%20Procedures.pdf.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There are no provisions in the law on information for consumers.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There are no provisions in the law on surveys for consumers relating to QoS. In a 2000 *Arrêté* applicable to fixed and mobile operators, the Ministry ordered that operators must provide a service that is of "international" quality, at the lowest possible cost and accessible to the greatest number of users.[780]

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

The 2000 *Arrêté* is only applicable to fixed and mobile operators. In this text, the Ministry ordered that operators must provide a service that is of "international" quality, at the lowest possible cost and accessible to the greatest number of users.[781]

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There are no such provisions in the law.

8.3.1.4 Lesotho

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

The 2000 Lesotho Communications Authority Act mandates the regulator to "promote... consumer interests"[782]. Customer service requirements are specified more fully in the licences of the mobile operators, but only require them to "develop, publish and enforce guidelines... for handling enquiries and complaints from customers"[783]. No such provision exists in the licence of the fixed line incumbent.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

Rules relating to consumer complaints are gazetted by the regulator[784] and require the consumer to have "exhausted" all efforts at resolving the matter with the operator concerned[785]. Similar information is also publicised on the web site of the regulator[786].

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780 *Arrêté Ministeriel No. 003/CAB/MN/PTT/K/2000 du 31 Janvier 2000 Fixant le Cahier des Charges pour Operateurs en Téléphonie Cellulaire Mobile ou Fixe* (Jan. 31, 2000) at Art. 3.

781 *Arrêté Ministeriel No. 003/CAB/MN/PTT/K/2000 du 31 Janvier 2000 Fixant le Cahier des Charges pour Operateurs en Téléphonie Cellulaire Mobile ou Fixe* (Jan. 31, 2000) at Art. 3.

782 Lesotho (2000) 'Lesotho Communications Authority Act', as amended, Lesotho Government Gazette Extraordinary Vol XLV No 42, 9 June, 2000, Section 15 (2) (c).

783 See for example : LTA (2001) 'Licence Granted by the Lesotho Telecommunications Authority to Vodacom Lesotho (Pty) Ltd for the Operation of Mobile Systems and the Provision of Mobile Services on 2001-10-11', Lesotho Telecommunications Authority, Maseru, Condition 14.

784 LTA (2000) 'Lesotho Telecommunications Authority (Administrative, Procedural and Service Provision) Rules 2000', Lesotho Government Gazette Extraordinary, Vol XLV No 103, 13 December, 2000, Chapter IV, available online at www.lca.org.ls/docs/LTA_Rules_2000.pdf

785 LTA (2000) 'Lesotho Telecommunications Authority (Administrative, Procedural and Service Provision) Rules 2000', Lesotho Government Gazette Extraordinary, Vol XLV No 103, 13 December, 2000, Section 20 (3) (d), available online at www.lca.org.ls/docs/LTA_Rules_2000.pdf.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

The licences of the mobile operators require them to ensure that "guidelines relating to enquiries and complaints [are] published and... made available to customers at the commencement of service"[787]. No such provision exists in the licence of the fixed line incumbent.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There is no evidence of consumers ever having surveyed about QoS or complaints issues.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

The requirement to develop customer service guidelines appears only to be specified in the licences of the mobile operators[788]. No such provision exists in the licence of the fixed line incumbent. A Code of Practice and complaints issues are regulated in respect of broadcasting[789]. No corresponding provisions appear to exist in respect of Internet or broadband services.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

This is not required under the 2000 Lesotho Communications Authority Act and there is no evidence of any such reviews having been undertaken.

8.3.1.5 Madagascar

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

The licence conditions for universal access licences include the obligation to interconnect with the national network as well as price caps for things such as interconnection fees and subscription fees.[790] There are no such provisions in the law.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

Article 7 of the law provides that all operators must respect regulations in relation to consumer protection and provision of information to consumers. No such decrees have yet been published.

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786 LCA (nd) 'How Lodging a Complaint', Lesotho Communications Authority, Maseru, available online at www.lca.org.ls/index.php?option=com_content&view=article&id=5&Itemid=5.

787 See for example : LTA (2001) 'Licence Granted by the Lesotho Telecommunications Authority to Vodacom Lesotho (Pty) Ltd for the Operation of Mobile Systems and the Provision of Mobile Services on 2001-10-11', Lesotho Telecommunications Authority, Maseru, Condition 14.2.

788 See for example : LTA (2001) 'Licence Granted by the Lesotho Telecommunications Authority to Vodacom Lesotho (Pty) Ltd for the Operation of Mobile Systems and the Provision of Mobile Services on 2001-10-11', Lesotho Telecommunications Authority, Maseru, Condition 14.

789 LTA (2000) 'Lesotho Telecommunications Authority (Broadcasting) Rules 2004', Lesotho Government Gazette Extraordinary, Vol XLIX No 38, 14 April, 2004, Part III & Part V, available online at www.lca.org.ls/docs/Broadcasting Rules 2004.pdf.

790 *Id.* at Art. 14 (2).

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

Article 7 of the law provides that all operators must respect regulations in relation to consumer protection and provision of information to consumers. No such decrees have yet been published.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

Article 7 of the law provides that all operators must respect the regulation in relation to consumer protection and provision of information to consumers. No such decrees have yet been published.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

Article 7 of the law provides that all operators must respect the regulation in relation to consumer protection and provision of information to consumers. No such decrees have yet been published.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

Article 7 of the law provides that all operators must respect the regulation in relation to consumer protection and provision of information to consumers. No such decrees have yet been published.

8.3.1.6 Malawi

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

The 1998 Communications Act mandates the regulator to "protect the interests of consumers, purchasers and other users of communication services"[791]. No customer service charters appear to be publicly available or publicised. There are currently no specific consumer protection provisions within pending legislation[792].

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There is no information on consumer complaint channels on the web site of the regulator, nor are any currently specified in terms of pending legislation[793].

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There is no requirement in the 1998 Communications Act for operators to inform their customers of their rights or of channels to lodge and escalate complaints. There may be such requirements in the operator licences, but none of these is publicly readily available.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

No consumer satisfaction surveys appear to have been undertaken or publicised.

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791 Malawi (1998) 'Malawi Communications Act', Republic of Malawi, Lilongwe, Section 4 (2) (a).

792 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe.

793 Malawi (nd) 'Malawi Communications Amendment Act 2010', draft legislation, Republic of Malawi, Lilongwe.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

There is no evidence that consumer protection requirements exist in respect of any services.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There is no evidence that consumer protection parameters are subject to regular stakeholder consultation.

8.3.1.7 Mauritius

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

There are no such provisions in the law.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There are no such provisions in the law.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There are no such provisions in the law.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There are no such provisions in the law.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

There are no such provisions in the law.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There are no such provisions in the law.

8.3.1.8 Mozambique

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

There are no such provisions in the law.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There are no such provisions in the law.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There are no such provisions in the law.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There are no such provisions in the law.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

There are no such provisions in the law.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There are no such provisions in the law.

8.3.1.9 Namibia

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

Operators are required in terms of the 2009 Communications Act to make the terms and conditions of their customer contract available to both the customer and the regulator, who must in turn make this information publicly available[794].

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

Any user may "lodge a complaint" with the regulator, but such complaints may only relate to "quality of service" [795]. Users are not required to attempt to have their complaints resolved with the respective operators in the first instance.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There is no requirement in the 2009 Communications Act for operators to inform their customers of their rights or of the channels for them to lodge complaints.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There is no requirement in the 2009 Communications Act for the regulator to survey consumers or to make the results publicly available. There is no evidence that any such surveys have been undertaken.

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[794] Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Sections 79 and 27.

[795] Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 131.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

The requirement to provide customers with contract information is applicable to "all licensees" [796], but there are no service-specific provisions.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There is no requirement in the 2009 Communications Act for consumer protection parameters to be regularly reviewed with stakeholders, and no evidence that any such review process has been instituted.

8.3.1.10 Seychelles

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

Section 29 of the Act provides that every person who –

(a) provides a broadcasting service or a telecommunication service;

(b) operates a transmission facility or a telecommunication facility;

(c) supplies terminal equipment or radio equipment;

(d) undertakes the maintenance or repair of broadcasting or telecommunication equipment,

shall, in doing so, ensure that consumers and users of the service, system or equipment do not suffer injury or damage. No specific provisions are published.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There are no such provisions in the Act.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There are no such provisions in the Act.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There are no such provisions in the Act.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

There are no such provisions in the Act.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There are no such provisions in the Act.

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[796] Namibia (2009) 'Communications Act, 2009', Act No 8 of 2009, Government Gazette of the Republic of Namibia, No. 4378, 16 November 2009, Section 79.

8.3.1.11 South Africa

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

The 2006 Electronic Communications Act requires the regulator to "prescribe regulations setting out a code of conduct for licensees" as well as "regulations setting out the minimum standards for and [sic] end-user and subscriber service charters".[797] There regulations have been promulgated and are in place.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

The 2006 Electronic Communications Act requires licences to contain provisions dealing with the "handling and resolution of complaints and disputes" and the "provision of appropriate remedies and redress in respect of such complaints and disputes"[798] Further, the regulator is required to develop regulations "detailing procedures for complaints and the monitoring and investigation of such actions that ensure the protection of the interests of consumers".[799] In addition "where an end-user or subscriber is not satisfied after utilising the complaint procedures set out in the regulations, his or her complaint may be submitted to the [regulator].[800]

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There is no specific requirement to this effect in the 2006 Electronic Communications Act, other than what is contained in the fact that the end-user and subscriber service charter may include "complaint procedures and the remedies that are available to address the matters at issue".[801]

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There no requirement in the 2006 Electronic Communications Act that consumer satisfaction be surveyed, nor any evidence that such surveys have been undertaken.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

Consumer protection requirements as set out above are applicable to all licensees, but are not defined specifically in relation to individual services.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There no requirement in the 2006 Electronic Communications Act that consumer protection parameters be periodically and publicly reviewed, nor any evidence that any such review has been undertaken.

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797 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 69.

798 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 8 (2) (d).

799 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 8 (2) (d).

800 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 69 (6).

801 RSA (2005) Electronic Communications Act, No 36 of 2005 (as amended), Republic of South Africa, Pretoria, available online at www.icasa.org.za/Manager/ClientFiles/Documents/EComsAct_2005_No_36.pdf, Section 69 (5) (e).

8.3.1.12 Swaziland

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

There are no such provisions in the law.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There are no such provisions in the law.

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

There are no such provisions in the law.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There are no such provisions in the law.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

There are no such provisions in the law.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There are no such provisions in the law.

8.3.1.13 United Republic of Tanzania

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

A detailed "Consumer Care System", dealing, inter alia, with complaints procedures, provision of information, an "outage credit system", customer contracts and billing is set out via specific regulation.[802]

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

The 2005 Consumer Protection Regulations set out in considerable detail a procedure for dealing with consumer complaints, which makes it clear that the regulator should only be approached "where a customer... is dissatisfied with the licensee's response" .[803]

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

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802 TCRA (2005) 'Tanzania Communications Services (Consumer Protection) Regulations 2005', Government Notice No 271, Tanzania Communications Regulatory Authority, Dar es Salaam, 9 September 2005

803 TCRA (2005) 'Tanzania Communications Services (Consumer Protection) Regulations 2005', Government Notice No 271, Tanzania Communications Regulatory Authority, Dar es Salaam, 9 September 2005, Section 6.

There is no requirement in the 2005 Consumer Protection Regulations for operators to inform consumers of their rights, although they are "required to notify customers about the availability of consumer complaint procedures".[804] Information on consumer rights is, however, available on the web site of the regulator.[805]

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There is no requirement in law or regulation that consumer satisfaction be surveyed and the results published, and no evidence that such surveys have been carried out.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

The 2005 Consumer Protection Regulations do not provide for consumer protection requirements specific to individual services.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There is no requirement in terms of either the law or regulation that consumer protection parameters should undergo periodic review with stakeholder participation, nor is there any evidence that any such review has been undertaken.

8.3.1.14 Zambia

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

The regulator is required to "prepare a code of conduct for licensees"[806]. The standard terms and conditions for both network and service licences require licensees to "enter into a service level agreement with all of its network users and subscribers without discrimination" and that the "terms and conditions [this] service level agreement shall abide by the minimum standards established in the Code of Conduct published by the Authority"[807]. The 'Code of Conduct' is not publicly available.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

The 2009 ICT Act requires the regulator to "establish guidelines for the making, receipt and handling of complaints of consumers". The law gives some detail as to what the guidelines may contain, including procedures for dealing with complaints, compensating consumers, the protection of privacy, the provision

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804 TCRA (2005) 'Tanzania Communications Services (Consumer Protection) Regulations 2005', Government Notice No 271, Tanzania Communications Regulatory Authority, Dar es Salaam, 9 September 2005, Section 6 (1).

805 TCRA (nd) 'Know your Rights: Rights & obligations of consumers of communication services', Tanzania Communications Regulatory Authority, Dar es Salaam, available online at www.tcra.go.tz/customer/ConsumerRights.pdf

806 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Section 69 (1).

807 ZICTA (nd) 'Network Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/network-licence.html & ZICTA (nd) 'Service Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/service-licence.html, sections 5.3 & 11.2 respectively.

of information, advertising, charging and billing[808]. The guidelines are not publicly available, but the web site of the regulator provides some detail on consumer rights and channels of complaint making it clear that "before you complain to the [regulator], complain to your service provider first"[809].

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

The 2009 ICT Act does not specifically require operators to inform customers of their rights. The fact that the licences require operators to enter into a "service level agreement"[810] with their customers would, however, imply that this is done.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

The 2009 ICT Act does not require the regulator specifically to survey levels of consumer satisfaction, and there is no evidence that such a survey has been undertaken.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

The consumer protection 'Code of Conduct' is not publicly available: it is therefore unclear what range of services it is applicable to.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

The 2009 ICT Act does not require the regulator to undertake periodic review of customer protection parameters, and there is no evidence that such a review has been undertaken.

8.3.1.15 Zimbabwe

Charters: ***Consumer protection requirements (eg customer service charters) are specified, publicised and binding.***

Although the law commits itself broadly to "promote the interests of consumers", [811] there are no consumer protection provisions in the 2000 Postal and Telecommunications Act. The 2001 Broadcasting Services Act does, however, contain a section dealing with consumer complaints. [812]

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808 Zambia (2009) 'The Information And Communication Technologies Act', No 15 of 2009, Republic of Zambia, Lusaka, Section 68.

809 ZICTA (nd) 'Consumer leaflet', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/consumer-protection/consumer-leaflet.html

810 ZICTA (nd) 'Network Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/network-licence.html & ZICTA (nd) 'Service Licence Standards Terms and Conditions', Zambia Information and Communication Technology Authority, Lusaka, available online at www.caz.zm/index.php/licensing/licence-terms-a-conditions/service-licence.html, sections 5.3 & 11.2 respectively.

811 Zimbabwe (2000) 'Postal and Telecommunications Act', Chapter 12:05, Government of Zimbabwe, Harare, Section 4 (1) (g) & Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 3 (2) (d).

812 Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 40.

Channels: ***Channels for consumer complaints are clearly specified, rest with the operator in the first instance, and include escalation procedures.***

There are no provisions dealing with consumer complaints in the 2000 Postal and Telecommunications Act. Licences or other documents may contain such requirements, but none are publicly available. The 2001 Broadcasting Services Act, by contrast, requires licensees to "establish a procedure for dealing with complaints", to attend to complaints "within a reasonable time" and to make complainants aware of their "right to complain to the [regulator] if the complaint is not remedied."[813]

Information: ***Operators are required to inform their customers of the rights as customers and consumers and of channels for complaints and escalation channels.***

The 2001 Broadcasting Services Act, by contrast, requires broadcasting licensees to ensure that every "complainant is made aware " of their right to escalate complaints via the regulator.[814] There is no evidence of any such requirement in respect of telecomms services.

Surveys: ***Consumers are regularly surveyed in relation to QoS and complaints issues and level of satisfaction with operators and their services, and the results made publicly available.***

There is no evidence that any consumer satisfaction surveys have been undertaken or the results published, either in respect of telecomms or broadcasting.

Scope: ***Consumer protection requirements exist in respect of all relevant services (fixed, mobile, Internet, broadband, broadcasting).***

There is no evidence that consumer protection requirements exist in respect of any service other than broadcasting.

Review: ***Consumer protection criteria and requirements are subject to regular review with stakeholder participation.***

There is no requirement in either the 2000 Postal and Telecommunications Act or the 2001 Broadcasting Services Act that consumer protection parameters be periodically reviewed or that this should involve stakeholder participation.

8.4 International Case Studies

8.4.1 EU

Protecting and enhancing the rights of telecommunications consumers is at the heart of European actions in the sector. Policy in this area includes, among other things, the right of access to services and their fair pricing, as well as ensuring the protection and privacy of personal information and identity.

Promoting consumers' rights, their prosperity and well-being are core values for the European Union and this is reflected in its laws and regulations. EU action in this area brings added value for consumers, by ensuring their rights are protected throughout the Union. In the field of consumer protection, the development of the internal market in goods and services has led the EU to adopt legislation to protect consumers, and this is fully applicable to telecoms services.

The goals of the EU regulatory framework for electronic communications are to encourage competition in electronic communications markets; improve the functioning of the internal market and guarantee basic

[813] Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 40 (1).
[814] Zimbabwe (2001) 'Broadcasting Services Act', Chapter 12:06, Government of Zimbabwe, Harare, Section 40 (1).

user interests that would not necessarily be guaranteed by market forces. Competition could not satisfy all citizens' needs, nor protect their rights. Safeguards are therefore necessary to ensure suitable protection of consumers, to ensure that privacy is protected and that citizens can access all essential telecoms services independently of where they are, or of their social or economic position.

Consumer rights are based around three principle directives plus additional decisions and regulations (such as the Roaming Regulation)

- Directive 2002/21/EC setting out the main principles, objectives and procedures for an EU regulatory policy regarding the provision of electronic communications services and networks – the Framework Directive.
- Directive 2002/58/EC sets out rules for the protection of privacy and of personal data processed in relation to communications over public communication networks
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services requires a minimum level of availability and affordability of basic services and guarantees a set of basic rights – the Universal Service Directive.

The regulatory framework's overall goal is for European consumers to benefit from increased choice of low prices, quality and innovative services as a result of good progress in the implementation of these rules. Within this context, the EU regulatory framework ensures that telecoms consumers can expect:

- Provision of universal service that ensures reasonable quality of service at affordable prices regardless of geographical location. This must include the possibility to access the emergency services in necessity, and also enable people with disabilities or specific needs to access telecoms services.
- To receive a written contract including specific details, in particular on tariffs and costs, with the possibility to break the contract if the supplier changes the terms.
- Telecommunication service providers and operators to ensure that their networks and services are as secure as possible.
- High standards of data protection for personal data stored or transmitted over the telecommunication network.
- Procedures to protect user identity, if required
- Portability of user numbers (within geographical limits) when requested
- Fair pricing for mobile phone calls wherever they are in Europe, giving citizens the freedom to roam.

The outcome is a developing internal market in Europe, in which consumers are able to access high quality telecoms services, no matter where they are, thereby contributing to improved quality of life throughout society.

8.4.2 Australia

Ensuring access to essential communications for all consumers has been an important priority for the Australian Communications Consumer Action Network (ACCAN), and, for a long time, for the wider consumer movement. Consumers are concerned that while major policies about the future of Australian communication infrastructures, services and content are being determined currently, there is no effective, comprehensive, updated framework for essential communications.[815]

[815] www.accan.org.au/research_full.php?id=24.

The consumer protection framework for telecommunications in Australia is based on a form of co-regulation. Although there are no detailed consumer protection rules set out in legislation, the legislation provides for the development and registration of industry codes of conduct on consumer issues, with a regulator in place to monitor codes of conduct and achieve compliance. An external dispute resolution scheme — the Telecommunications Industry Ombudsman — has been established to rule on individual complaints which cannot be resolved with the relevant company.[816]

Section 9 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 states that the object of the USO is to ensure that:

- the standard telephone service;
- payphones;
- prescribed carriage services;
- digital data services

are reasonably accessible to all Australians on an equitable basis, wherever they reside or carry on business. The section also states that the USO are fulfilled as economically as possible and that any losses involved in its provision are shared among carriers.

The Act gives the Minister the power to designate a universal service provider with primary responsibility for delivery of the USO.

The Telecommunications (Consumer Protection and Service Standards) Act 1999 restated in a single Act the range of safeguards for telecommunications consumers that were contained in the Telecommunications Act 1997 and the Telstra Corporation Act 1991. These safeguards include:

- The Universal Service regime;
- The National Relay Service (this provides the deaf or hearing impaired with access to a standard telephone service). In June 1998 it was announced that the contract for provision of the National Relay Service was awarded to the Australian Communication Exchange (ACE);
- The Customer Service Guarantee (CSG). The CSG was introduced by the Telstra (Dilution of Public Ownership) Act 1996 as an additional safeguard for consumers. The CSG provisions were re-enacted in the Telecommunications Act 1997 and essentially provide for the Australian Communications Authority (ACA) to determine performance standards for carriers. These standards relate to such matters as connection and fault rectification times and the keeping of appointments with customers. If a carrier fails to meet a standard then it is liable to pay compensation to the customer in accordance with a scale determined by the ACA;
- The Telecommunications Industry Ombudsman (TIO) scheme. This requires providers to enter into a scheme which allows the TIO to investigate and make determinations about complaints by consumers;
- The price control arrangements for Telstra and continued access to untimed local calls.
- The Telecommunications Legislation Amendment Act 1999 repealed the provisions of the Telecommunications Act 1997 and the Telstra Corporation Act 1991 that were re-enacted in the Telecommunications (Consumer Protection and Service Standards) Act 1999. It also contained provisions to promote competition in the telecommunications sector and to require the Australian Competition and Consumer Commission (ACCC) to monitor and report on telecommunications charges and Telstra's compliance with price control arrangements.

816 www.galexia.com/public/research/assets/choice_consumer_protection_in_telecoms.pdf

On the 10 May 2000 the Government introduced the Telecommunications (Consumer Protection and Service Standards Act) Amendment Bill (No 1) 2000 to enable the Minister to determine a universal service provider's net universal service cost (NUSC) for up to three years in advance, and to give carriers some certainty about the universal service regime that would apply if they won the tender to extend access to untimed local calls in remote Australia. The Bill was passed, with the House agreeing to Senate amendments relating to the level of ministerial discretion and the compulsory information requirements.

On the 29 June 2000 the Government introduced the Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No 2) 2000 and the Telecommunications (Universal Service Levy) Amendment Bill 2000 to implement policy decisions announced on the 23 March 2000.

Steadily since the 1980s, there has been a recognition that universal service is complex and multi-faceted, and that greater consultation with consumers themselves, as well as much more detailed and rigorous research, is needed. Such knowledge is vital to provide evidence upon which policy can be based — and against which its implementation can be understood and gauged.

8.4.3 Ireland

By law, ComReg is responsible for regulating the Irish electronic communications sector. One of ComReg's responsibilities is to select a universal service provider (USP), to set requirements and to monitor its performance. In July 2003, ComReg chose Eircom and, with the consent of the Minister for Communications, Energy and Natural Resources, designated it as the universal service provider for three years. When this period came to an end in July 2006, Eircom was again designated as USP for a further four years.

The Communications Regulation Act 2002 gives ComReg a statutory role in protecting consumer's welfare and ensuring regulatory compliance by electronic communications service providers. This includes areas such as the universal service provision of telecoms access, consumer rights and pricing transparency.

ComReg achieves these objectives in a number of ways:

- Monitoring compliance by Eircom as Universal Service Provider.
- Monitoring service provider's compliance with their regulatory requirements including the following areas: contracts, tariff transparency, codes of practice, directory enquiry obligations, direct marketing opt – out register, complaint handling and mobile roaming charges.
- ComReg also actively works with external bodies and organisations to promote competition and user interests. ComReg actively meets on a quarterly basis with the Consumer Advisory Panel who provide independent advice to ComReg on a diverse range of consumer issues and inform ComReg on the views and needs of different groups such as residential, small to medium enterprises, large businesses and people with disabilities.
- ComReg has also established a Forum on Services for People with Disabilities. Membership of the Forum comprises service providers (fixed line and mobile), The National Council for the Blind in Ireland (NCBI), National Disability Authority (NDA), People with Disabilities in Ireland (PWDI) National Association for Deaf People (NAD) and the Disability Federation of Ireland (DFI).

Retail contracts offered to consumers by any service provider providing connection or access to the public telecommunications network are required to comply with Regulation 17 of S.I. No. 308/2003 European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003.

Requirements in Relation to Contents of Contracts:

- The contract shall specify the identity and address of the supplier in the contract as required under Regulation 17 of the Universal Service Regulations.
- Particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges must be specified in the consumers contract as required under Regulation 17 of the Universal Service Regulations.
- Service providers are further required to be bound by the Directions of Document No. 03/86 which provides that in accordance with Regulation 18 of the Universal Service Regulations service providers shall provide a direct link from the homepage of their website into the tariff information section of their website and provide printed tariff information in response to a reasonable consumer request.
- In accordance to ComReg Decision D11/04 (04/86), all service providers providing a publicly available telephone services (PATS), or individual elements of such a service, shall observe the requirements and adhere to principles set out in the ComReg Code for Tariff Presentation. This Code requires the presentation of accurate and comprehensive tariff information that is accessible to the consumer.
- Any compensation and refund arrangements which apply if contract service quality levels are not met must be specified in the contract in accordance with Regulation 17 of the Universal Service Regulations.
- A service provider shall, not less than one month prior to the date of implementation of any proposed modification, notify its customers to that service of the proposed modification in the conditions of the contract for that service, and their right to withdraw without penalty from such contract if they do not accept the modification. A consumer in such circumstances may withdraw from his or her contract with the service provider, without penalty if he or she does not accept a proposed modification: Regulation 17 of the Universal Service Regulations.
- Consumer contracts must specify the services provided, the service quality levels offered and time for the initial connection to take up the service: Regulation 17 of the Universal Service Regulations.
- The types of maintenance service offered must also be specified in the service provider contract; in addition maintenance charges are set out: see Regulation 17 of the Universal Service Regulations.
- The duration of the contract, conditions for renewal and termination of services of the contract must all be specified: see Regulation 17 of the Universal Service Regulations.

In addition to obligations in relation to the content of consumer contracts, service providers have duties to provide relevant contractual information in advance. They also owe duties as regards fairness and adequacy of notification of terms of the contract. Such duties under common law ought to be observed to the extent that they are applicable.

Under statute law the provisions of the following may also be relevant if applicable but do not fall under ComReg's remit:

- Sale of Goods and Supply of Services Act 1980
- The Distance Selling Regulations,
- The Unfair Terms Regulations

In addition to general consumer protection measures, specific measures are applicable to particular universal service obligations.

Thus, for example, service providers offering a Publicly Available Telephone Service (PATS) shall take all reasonable steps to ensure uninterrupted access to emergency services (see Regulation 19 of the Universal Service Regulations) and shall also ensure that consumers are able to call the emergency services (on both 112 and 999) free of charge in accordance with Regulation 22 of the Universal Service Regulations.

When providing information to customers about emergency access numbers, service providers should refer to the European harmonised '112' emergency code as well as the original '999' code.

Under Regulation 4 of the Universal Service Regulations the designated Undertaking (Eircom) shall ensure that a comprehensive directory of subscribers is made available to all end-users or that a comprehensive telephone directory inquiry service is made available to all end-users. Under Regulation 21 (1) of the Universal Service Regulations an Undertaking providing a PATS service shall ensure that customers can have an entry in a directory and a directory inquiry service set out in Regulation 4. Under Regulation 21 (2) of the Universal Service Regulations an Undertaking that assigns telephone numbers shall meet all reasonable requests to make available, for the purposes of directory inquiry services and directories, the relevant information. Also under Regulation 21 (3) of the Universal Service Regulations an Undertaking providing a connection to the public telephone network to end-users shall ensure that all such end-users can access operator assistance services and a directory inquiry service, in accordance with Regulation 4.

Data protection and privacy laws including the Data Protection Acts 1988 to 2003 and the European Communities (Electronic Communications Networks and Services)(Data Protection and Privacy) Regulations 2003 S.I. No. 535 of 2003 (hereafter the Data Protection and Privacy Regulations) are complied with to the extent that they are applicable.

Under Regulation 14 of the Data Protection and Privacy Regulations an Undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations shall, for the purposes of Regulation 13(2)(b) or 13(4)(b) of the Data Protection and Privacy Regulations, record or cause to be recorded in the NDD, a request to the operator or notified to the relevant Undertaking, that the subscriber does not consent to unsolicited calls for the purpose of direct marketing or to such calls by means of an automated calling machine or a facsimile machine to a line of that subscriber.

Service providers should ensure that rules in relation to calling and connected line identification are observed. Service providers are obliged to comply with these obligations as set out in Regulation 8 of the Data Protection and Privacy Regulations 2003.

Number Portability is an end user (consumer) right, and an obligation on all service providers providing ('PATS') under the Universal Service Regulations. Service providers providing a PATS service should ensure that subscribers can retain his or her number. Service providers are obliged to comply with this obligation as set out in Regulation 26 of the Universal Services Regulations.

As per Regulation 17 of the Universal Service Regulations the method of initiating procedures for settlement of disputes, in accordance with Regulation 28 of the Universal Service Regulations, must be specified in any end-user(consumer) contract. Regulation 28 provides that without prejudice to any legal rights of action which may apply, a service provider shall implement a code of practice for handling complaints from consumers in respect of an alleged contravention of these Regulations. It sets out several matters which such a code of practice shall include. Service providers are further required to be bound by the Directions of ComReg Document No. 03/89 which provides that all service providers subject to Regulation 28 (1) of the Universal Service Regulations shall amend their code of practice (required by ComReg decision notices D13/01 and D06/01) for handling complaints from end users to include a specific provision to allow for reimbursement of payments and payments in settlement of losses incurred in the event of a complaint.

The provisions of the following may also be relevant and service providers should observe these provisions to the extent that these regulations are applicable:

- The Unfair Terms Regulations;
- The Consumer Protection Act 2007
- The Distance Selling Regulations

Important too is the establishment of the Consumer Advisory Panel, which was established by ComReg in accordance with Section 12 of the Communications Act 2002. The purpose of the Consumer Panel is to advise the Commission for Communications Regulation (ComReg) on developments, innovations and areas of consumer concern surrounding the three main areas of ComReg's consumer policy (maximise consumer welfare, protecting consumers and raising consumer awareness.

The Consumer Advisory Panel consists of six members appointed by the Commission. In appointing the members, the Commission has ensured as far as possible that the members have knowledge or experience of the telecommunications industry. The Advisory Panel meets approximately four times in one annual year.

The Advisory Panel is responsible for highlighting issues that assist ComReg's understanding of consumers concerns in relation to the communications industry. The Panel advises ComReg in open discussions not forgetting the confidentiality that may surround these issues. The Panel is an added source of information to ComReg but it is not the sole source of consumer advice and input as ComReg has within its own resources the ability to identify consumer interest when making regulatory decisions.

The Main Functions of the Consumer Panel are:

- To help ComReg's decision making by raising specific issues of consumer concern
- To provide an open and independent advice to ComReg on a diverse range of issues that arises in the communications industry
- To give advice on how ComReg's activities are impacting on consumers
- To highlight the importance of engaging with residential consumers and Small to Medium Enterprises
- To make collective recommendations and suggestions to ComReg on current consumer concerns
- To advise ComReg on consumer interests in the markets regulated by ComReg.

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