

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

Dar es Salaam,  
27<sup>th</sup> April, 2009.

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THE UNIVERSAL COMMUNICATIONS SERVICE ACT  
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THE UNIVERSAL COMMUNICATIONS SERVICE ACT

CAP. 422

REGULATIONS

*(Made under section 28)*

THE UNIVERSAL COMMUNICATIONS SERVICE ACCESS FUND REGULATIONS,  
2009

Citation  
and  
commence-  
ment

1. These Regulations shall be cited as the Universal Communications Service Access Fund Regulations, 2009 and shall come into operation on the date of publication.

Interpre-  
tation

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

using platforms, systems and equipment that are scalable and capable of being expanded and extended in terms of their ability to provide more services as required into the future;

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

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

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

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

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

“Minister” means the Minister responsible for communications;

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

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

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

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

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

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

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

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

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

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

PART II  
UNIVERSAL SERVICE PROVISION

Applica-  
tion

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

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

Objectives  
Universal  
Service

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

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

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

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

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

Universal  
Service  
Levy

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

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

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

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

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

Verifica-  
tion of a  
licensee's  
gross  
operating  
revenue

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

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

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

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

Determi-  
nation of

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

area, the Fund shall consider the following factors-

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

rural and  
urban  
under-  
served  
areas

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

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

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

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

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

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

Priority  
setting  
for  
allocation  
of  
financial  
resources

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

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

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

PART III

SUBMISSION OF UNIVERSAL SERVICE PROPOSALS, EVALUATION PROCESS AND APPEAL MECHANISM

Project  
proposal  
require-  
ments.

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

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

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

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

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

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

Bidding  
process  
for  
universal  
service  
subsidy  
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(e) venue and deadline for submission of any inquiries by the bidders; and

(f) tender opening, date and venue.

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

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

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

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

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

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

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

Evaluation  
criteria

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

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

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

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

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

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

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

Award of universal service subsidy

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

Financial agreement

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

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

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

