

**Submission on the
Discussion Document: Universal Service and Access Obligations Review
Issued for comment by the
Independent Communications Authority of South Africa (ICASA)
By the South African Communications Forum (SACF)
12 November 2010**

The members of SACF welcome the opportunity to provide comment on the Discussion Document on the review of the Universal Service and Access Obligations Framework issued by ICASA. Among the primary objectives of the SACF is to promote the development of policy, regulatory and legislative frameworks that achieve universal access to an information society in South Africa. Thus, the subject of the discussion document is central to SACF's core objectives.

ICASA has raised specific questions in its discussion document and we have submitted below some general comments and observations beyond the scope of the questions posed.

SACF has not answered all the questions raised by ICASA, and has focused on those questions most relevant to our membership, or on which we were able to achieve consensus among our members.

1. Introduction

The SACF notes that addressing the ICT infrastructure deficit – the digital divide - is a matter of particular urgency if South Africa, and indeed Africa, is to escape the trap of social exclusion and marginalization. The need to deliver Universal Service and Access is an important one for the social and economic development of South Africa.

Implementation of ICT has been shown to have a multiplier effect on economic growth, job creation and skills development. Additionally, access to ICT and broadcasting has significant impact on access to

- Quality health care
- Globally competitive education; and
- Community security

SACF holds that Universal Service and Access should be more than just access to basic telephony; it should include access to advanced services such as broadband infrastructure, broadcasting, multimedia and postal services. Therefore, the SACF is generally in support of requiring contributions by every holder of an electronic communications service license, electronic communications network service license and broadcasting service license to the Universal Service Fund as a means to address this digital divide.

2. General Comments on the Principles outlined in the Discussion Document regarding the establishment of USAFs

In section 9.16 of the Discussion Document, certain principles that have been adopted by some countries and which may be considered in setting an analytical framework for the review of the USAF obligations are noted.

Generally, SACF is in agreement with these principles articulated. Particularly, we agree with the first principle mentioned, that USAF's should have clear goals, targets, timelines and processes and the ability to measure and monitor progress against these commitments. SACF has been one of the proponents of the development of an integrated framework for the achievement of agreed goals and targets for universal access and service. SACF has proposed the development of ICT Vision 2020, a road map for the achievement of universal service and access in South Africa by 2020. Once an inclusive and overarching framework is adopted by the stakeholders of the ICT industry, the USAF fund would then have clear goals, targets and timelines established against which it can be judged.

However, we do not agree with the principle that USAF allocation policy should be on a least-cost technology or least subsidy basis. In some cases the least cost option is offered because the solution is outdated and represents a legacy technology rather than the most effective approach. Or the lower cost could be linked to the product or solution offered being less robust and therefore requiring greater maintenance and cost over time. Cost should be a factor in choosing technology but if pricier solutions offer the potential to leap frog to greater efficiency and are more robust, their higher cost should not disqualify them purely on a cost basis.

3. E-rate for Public Schools and public further education and training institutions

From their experience, the members of SACF are of the opinion that although the objectives for the establishment of the e-rate in terms of section 45(3) of the ECA are valid and should be pursued, the mechanism to achieve the objectives has not been effective.

Part of the reason for the dismal achievements of the e-rate is that there has been little coordination and communication between the Department of Communications and the Department of Education in implementing the e-rate at schools and FET institutions. Other members noted that there were not enough schools to meet the obligations and this has not been taken into consideration. Another factor that has led to a dismal implementation of the e-rate is that the schools which are supposed to be benefitting have very limited involvement in the implementation. There is little evidence analysis and monitoring to determine if the schools are actually gaining greater access and use through the introduction of the e-rate.

SACF members recommend that a new system should be established under which schools can apply to the USAF for a subsidy to lower their costs of internet access. We also propose that such subsidy not be limited to only bringing down the cost of

internet access for schools but should be applied to all electronic communication services.

Thus schools would be part of the development and design of their ICT plans which would be submitted to, reviewed and approved for subsidy from the USAF. SACF members submit that this would be a much more effective means of achieving the proposed aims of the e-rate.

4. SACF recommendation on the various options considered for the USAO framework

In section 14 of the Discussion Document, various models are put forward to be considered for the USAO framework. These include:

Model	Description
Model 1 Pay and Play	<ul style="list-style-type: none"> - still Contribute to USAF - Carry USAO's <ul style="list-style-type: none"> - only new ones - Maintain existing and implemented obligations - Licensees and others to compete for subsidized projects - Cooperation between USAASA and ICASA on managing and monitoring
Model 2 Pay and play (or not)	<ul style="list-style-type: none"> - No obligations <ul style="list-style-type: none"> Can choose to participate in competitive tender - Obligated to pay - ICASA no involvement
Model 3 Pay and No play	<ul style="list-style-type: none"> - Pay into fund - No obligations - Access to USAF resources only to current licensees
Model 4 Pay or Play	<ul style="list-style-type: none"> - Offset of pay against play - ICASA finds "difficult to manage"

SACF would strongly recommend the adoption of model 2. This model is less onerous for ICASA to monitor. It also is more open in allowing any licensees (or potential licensee) to choose to participate in a competitive tender.

5. Questions poised in the Discussion Document:

15.1 Legislative and Regulatory issues

US/UA Related Issues

15.1. Legislative and Regulatory Issues

15.1.1. Must licensees continue to carry USAOs? (in answering these questions you are requested to comment on whether broadcasters must carry such obligations)

No, licensees must have no USAOs imposed, in line with model 2 above.

15.1.2. If so:

15.1.2.1. Which factors must be taken into account in determining whether a particular licensee or category of licence must carry USAOs or not?

No licensees must have USAO obligations.

15.1.2.2. Which licensees (electronic communications network service (“ECNS”), electronic communications service (“ECS”) and/or Broadcasting Licensees (“BCS”) must carry the USAOs, taking into account the answer to 12.2.2.2) **You are requested to provide reasons for your answers;**

See above.

15.1.2.3. Should all licensees or some continue to carry USAOs (ECNS, ECS and BCS) or which, if not all, must carry USAOs? Please indicate what the role of licensees no longer carrying USAOs) should be towards the goal of achieving US/UA.

See above. USAOs have been poorly implemented and poorly monitored, not only in South Africa but worldwide. All licensees should be required to make USAF contributions, and participate by competitive tender for projects funded from the USAF.

15.1.2.4. Do you submit that licensees falling within the same category of a licence must carry the same obligations, including similarity in terms of nature and quantity? You are requested to refer to experiences encountered in the implementation of existing obligations, if any.

See above.

15.1.3. What approach should be carried in respect of the USAOs imposed under the Telecommunications Act which we not carried over into the converted licences issued under the ECA? You are also required to consider what should happen to such obligations which were not carried over into the converted licence.

USAOs not implemented before the ECA licence conversion process, should remain as unfulfilled obligations, however the Authority must consider options to have these finally extinguished, in consultation with the operators. Suggestions in this regard are:

- **provide operators with information required for implementation, lists of schools for internet connectivity, for instance;**
- **address the challenges experience during, before and after implementation;**
- **implement an effective monitoring framework; and**
- **penalize non-compliance, and wipe clean the slate.**

All four aspects must be present for an effective USAO framework. If there is any doubt that any of the factors cannot be effectively implemented, we suggest that ICASA converts the USAOs to USAF payment obligations. Then focus all resources, with USAASA and MDDA, on devising and then implementing a workable USAF framework with one agency in charge of control, coordination, implementation and for penalizing non-compliance.

15.1.4. What kind of obligations must be imposed on the licensees that you submit need to carry USAOs? You are requested to refer to experiences in implementing the existing obligations, if any that you think must be taken

into account in determining obligations that individual licensees or licenses have to carry. You are requested to deal with BCS licensees separately in your answer;

See above

15.1.5. Would you submit that there is currently a clear and sufficient link between USAOs and the processes undertaken by USAASA and the MDDA in terms of the ECA? You are requested to provide full details in your answer.

The disconnect between the activities of the different agencies dealing with universal service and access issues are mostly evident in the lack of impact that USAOs has had on the most deprived communities with respect to connectivity and information. The underlying cause of the disconnect, we believe is because different aspects of universal service and access are regulated by different agencies, with different budgets, focuses, leadership and motivation. The process of defining the relevant concepts, raising funds for implementation and implementing programmes must be centralized in one agency, alternatively a coordinating committee with real powers must be established. The fact that the relevant agencies do not report to the same ministry, may complicate the latter option.

From comparative analysis it is clear that successes were attained where a higher degree of coordination is present in devising, imposing and implementing USAOs.

15.1.5.1. If not so what would you submit has to be done to improve the harmonization of those processes towards the achievement of the goal of USAOs?

See above.

15.1.6. What should happen to the obligations which were not completed or implemented at the time of the conclusion of the licence conversion or were not carried over into the converted licenses and those that were carried over

into the converted licenses, where applicable, and new ones which were imposed upon conversion of the licence, where applicable?

See above

15.1.6.1. Would you submit that licensees should carry an obligation to maintain the obligations that have already been implemented? Please provide reasons for your answer.

Certain obligations, such as connectivity to schools must be maintained, whereas others such as the provision of handsets need not be. Maintenance should, however, be treated as separate from the initial implementation of the USAOs and must be funded from the USAF.

15.1.7. Must licensees continue to make a contribution to the USAF?

Yes

15.1.7.1. If so, taking into account your answers above on whether licensees should carry or not carry USAOs, or would you submit that the existing amount of contribution is or would be sufficient?

Yes

15.1.7.2. If not so from which sources do you think the USAF should be funded?

Not applicable.

15.1.7.3. If you submit licensees should not continue to carry USAOs, what would you submit the role of licensees should be towards contribution [sic] to the goal of US/UA?

All licensees must contribute to the USAF and decide whether or not to participate in USAOs through competitive tenders funded from the USAF.

15.1.7.4. If you submit that licensees should continue to carry USAOs, would you submit that such obligations must be adjusted up in view of the relief from contribution into the USAF?

See above.

15.1.8. Which concepts or terms used in the ECA that have a bearing on USAOs and/or the USAF must be defined or amended? You are requested to refer to difficulties encountered in implementing or interpreting such terms and/or concepts, if any.

Due to the onerous nature of current USAO regime, we believe that operators (and others) opportunistically raise difficulties relating to interpretation of concepts and terms. Unfortunately, this is not difficult to do under the current framework – as there is much uncertainty. We propose a simpler, centralized framework that doesn't "punish" operators with never-ending obligations and doesn't paralyze ICASA with attempts at monitoring and penalizing non-compliance.

15.1.9. Which method has to be used in defining or amending such terms and/or concepts, including whether in the ECA itself, by ICASA, USAASA or any other relevant body?

There is no reason to amend the public participation processes prescribed by the ECA, and employed by government agencies in respect of making public policy or legislation. The discrete and disjointed manner of implementing USAOs, we submit, is a bigger stumbling block.

15.2 Implementation Issues

15.1. Comments on the current USAO implementation system

The current model of Pay and Play with Universal Service Obligations imposed on licensees has proven to be commonly burdensome to operators. Furthermore, the inability to access the USF that is to date not being released to ICT infrastructure projects is a hindrance to the continued support from operators. Thus, it is SACF's view that the current implementation system is flawed and needs to be reviewed if USAOs are to be implemented efficiently and effectively.

The current system was never properly set up to address the cost burden of implementing USAOs and this led operators to devising means that ended up not meeting the intended USAO objectives.

Also, the current system does not precisely specify areas which fall within the scope of underserved areas; and this has opened the system to abuse and malpractices.

Further to the above, in the past the market was not as competitive as it is today; and the market was still technology specific. Thus, there were fewer operators to carry this national burden using prescribed technologies.

It is apparent that without any financial assistance from ICASA/USAASA universal service will continue to be regarded as a challenge to operators considering that the return on investment in this market is unjustifiable. It would seem that operators will not willingly invest in this market without an incentive to do so. USF has not been used to advance ICT development. These challenge call for a well designed, sustainable, incentivized implementation system that would encourage operators to take services to the underserved areas. Thus, it would be favourable to move to a new model where access to the USF is made possible to subsidize the cost of taking service to the rural/underserved areas.

15.2.2.1. The Initial Processes for the Development and Determination of USAOs

Following the history behind USAOs in SA, it is highly recommended that the development and determination of USAO's should follow a clear, transparent, non-discriminatory process to avoid failures of the past. Thus it is recommended that prior to determining the USAOs the authority should consider taking the following process:

- First, conduct a proper needs and gap analysis that is to be addressed by the intended USAOs. This follows the authority's conceptual framework of determining the Market Access Gap.
 - i. This analysis should also point to where the gaps are in terms of: what basic infrastructure exists; what access or which services can be taken to the people, including which applications can already be offered.
 - ii. This should be followed by the authority identifying the exact areas which fall within the parameters of underserved areas and as well as identify the areas according to the type of market access gap apparent in those areas.
 - iii. It might also be useful for the authority to consider conducting a proper needs assessment prior to determining the USAOs considering the socio-economic factors that may hamper apparent in this market. It is one thing to wish to realize government's social objectives but it is equally important to determine the services that may be required; the willingness to pay for those services and the affordability of such services. A thorough analysis of demand and supply is vital in developing USAOs that are attainable and sustainable; else this initiative may become another futile exercise.

- iv. Having mapped out the scope of the digital divide to be addressed, the authority should then estimate the cost of meeting the universal service and access objectives.
- v. The authority should then consider the resource capabilities of licensees to align the market access gap to the available resources i.e. the human, financial and technical resources that every licensee can contribute towards meeting these objectives.
- vi. The authority should as well estimate the probability of subsidizing this programme in case there is insufficient capacity to deliver on this universal service and access objectives. It is fair to say that all ECNS licensees should have a shared responsibility towards USAO's however; careful consideration should be applied to market conditions against the industry's capabilities to deliver on universal service and access sustainably.
- vii. Clearly, solving the market access gap is a social objective desirable by government but it might not be feasible to address it without any government subsidy. Else it may not be sustainable. Government intervention may also be required even where markets are efficient, to ensure that services are taken to all citizens and not only to profitable areas.

Once this analysis is complete, then the authority should be better positioned to determine what USAOs to prescribe; how to allocate these USAOs and then set achievable targets.

15.2.2.2. Coordination of USAOs

Currently, there are various stakeholders responsible for ensuring that there are efforts towards reducing the digital divide;

- Government, through the DoC has set USA targets to meet the social objectives;
- USAASA which is responsible for promoting the goals of universal service and access in under serviced areas;
- ICASA who is the authority to ensure that the objects of the Act are met in terms of the universal service and access;
- Licensees who are responsible for enabling the provision of access and services to the market; and

- The newly created Universal Service Fund company that is responsible for minimizing the digital divide between rural communities through provision of telecommunication services in unserved and underserved areas of country.

These stakeholders have a common vision towards universal service and access but they may have varying tactics of realizing their goals. As a result, it becomes imperative that there must be a coordinated implementation framework where all the various stakeholders' roles and responsibilities are mapped out in line with the plan. This framework must set clear objectives, precise targets and allocate roles and responsibilities to be played by the various stakeholders.

Most importantly, there must be coordination of the demand curve – customers in the underserved areas are likely to be at different developmental levels thus provision of access and services must be matched to this demand curve. Demand may vary from basic to advance ICT services.

Finally, there must be a coordination of USAO projects as they are assigned to the various licensees. There must be a central place where USA projects are planned, costed, allocated, assigned and thus managed. And the SACF would like to strongly recommend that since ICASA has better resource capacity, especially the technical skills, they should play the central coordination role for USAOs.

15.2.2.3. Monitoring and evaluation of USAO's

Monitoring and evaluating USAOs is critical to the success of implementing the universal service and access programme and implementing a universal service and access programme without a proper monitoring and evaluation function may just lead to the same failures experienced in SA before. Ideally, the initial process of developing and determining USAOs should already take into consideration the monitoring and evaluation framework that will detail:

- A description and rationale of what should be monitored and evaluated;
- The schedule of the monitoring process in line with the timelines set for the USA programme;
- The skills set and other resources that will be required to set up this function;
- The layout and frequency of the monitoring reports

A dedicated monitoring and evaluation committee must be set up particularly for monitoring and evaluating the implementation of USAOs. The main function of this committee will be to account on the progress and act as an early warning system to detect potential problems/challenges/barriers early in the process.

Where subsidies or tenders are awarded the committee should ensure that operators use those funds for what they were intended for; that operators claim the true costs of rendering services and not inflate costs to make excessive profits at the expense of customers. Overall, the monitoring and evaluation of USAOs will ensure that the programme is on track and achieving the intended results.

15.2.4. Should only ECNS licensees be eligible for the competitive tendering process for US and UA projects?

The Act assumes that the only incentive necessary is for constructing, operating and maintaining electronic communications networks in under-serviced areas. What it fails to acknowledge is the fact that once the basic infrastructure has been laid, an ECS must go knock at the customers' doors to offer services. The concern raised by SACF is that if the ECSs are not going to be eligible for the competitive tendering process, they are most likely not to play in this market and or to charge higher prices to the consumers, thus defeating the goal of affordable and usable access and services.

The SACF recommends that ECS should also be eligible for competitive tendering process for US and UA projects.

15.3 Policy Issues

With regards to the recommended model, can it be implemented under existing ECA provisions? If so, provide full details.

In terms of s8 (2) (g) of the ECA, the standard terms and conditions for various licences developed by ICASA may take into account any universal service obligations, while s8 (4) states that ICASA may by regulations attach universal service obligations to certain licencees. Section 89 of ECA states that every licence holder, granted in terms of chapter 3 must pay in addition to other fees prescribed by Act, annual contributions to the Universal Service and Access Fund.

On the other hand s90 of the ECA makes provision for the tendering for universal service and access projects, and goes as far as setting out that these projects will provide incentives to electronic communications network service licencees for constructing, operating and maintaining electronic communications networks in under serviced areas.

The ECA therefore makes provision for contributing both towards the Universal Service and Access Fund and for tendering for universal service and access projects as envisioned by the discussion document. So yes, the recommended model may be implemented under the existing provisions of the ECA.

What should be the focus areas of USAOs in terms of infrastructure and services?

It goes without saying that the main reason under serviced areas are under-serviced is because of the fact that construction of infrastructure in is expensive, and if operators foresee a situation whereby they will not see a return on their investment then there won't be any incentive in expanding their infrastructure to those areas. This is a problem,

and should be a focus area, as incentives such as sharing or subsidizing of costs by USF would play a big role in fostering the goals of USAOs.

6. General Comments regarding the Fund

Although the following might be outside the scope of the questions raised, SACF would like to convey the following commentary regarding the fund.

- 6.1 **New Objectives.** The SACF notes that the ICT environment has changed considerably since the original establishment of the Fund. Convergence, liberalisation of the regulatory regime and introduction of new players has had considerable impact on access and services in the ICT and broadcasting arenas since its inception. The objectives of the Universal Service Fund need to be redefined and quantified in this new converged environment and measurable standards developed to gauge whether these objectives are being met.
- 6.2 **Transparency.** The general perception is that a significant amount of funds have been collected but that the majority of these funds have not been utilised. There has been a perceived lack of transparency as to how much has been accumulated and how much has been spent.
- 6.3 **Allocating Funds Collected under the Telecommunications Act Separately.** The SACF recognises that the current fund is a creation of the Telecommunications Act and funds were contributed by specific stakeholders towards specific core objectives defined under that Act. Accumulated funds that were collected for specific purposes should be applied to those purposes.
- 6.4 **Allocation of Funds collected under the Electronic Communications Act.** Going forward, the SACF recognises that the USF should define a new set of objectives for the utilisation of funds to be contributed under the ECA from the new range of licensees.
- 6.5 **Contribution Rate.** A mechanism should be put in place to ensure that the contribution rate going forward is appropriate to achieve the defined objectives.
- 6.6 **Monitoring.** Given the importance of the Fund and its aims and objectives, the SACF feels that there should be greater monitoring of the use and application of the Universal Service Fund. Reporting should clearly show in detail as to the achievement of the defined goals and objectives of the Fund and how the Fund monies have been applied. There should be greater accountability to stakeholders in the management and use of the Fund.
- 6.7 **Percentage Contribution as a Correlation to a Defined Target.** Initially, the goals and objectives of the Universal Service Fund need to be quantified. Trying to determine the fairness or correctness of percentages of annual turnover to be levied is difficult without knowing the target goal to be reached. The Fund should quantify the amount of money required to fulfill their objectives and propose percentages that will reach the stated target. An annual target amount could be developed and a projection made to ascertain if the proposed percentages have any correlation to the targeted funds to be raised.

7. Conclusion

The SACF supports the general principles outlined in the Discussion Document. However, the proposed framework is not adequate to address the shortcomings of the use of funds contributed to the USAF. SACF recommends that the ECA should be amended to address these shortcomings.

SACF would welcome the opportunity to orally present its recommendations to ICASA.