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Dr SS Mncube

The Chairperson

The Independent Communications Authority of South Africa

Pinmill Farm

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Attention: Mr Thato Mahapa

Per email: tmahapa@icasa.org.za

Dear Mr Mahapa

DISCUSSION DOCUMENT: UNIVERSAL SERVICE AND ACCESS OBLIGATIONS REVIEW

Please find herewith Vodacom's written comments in response to the published Discussion Document on the Universal Service and Access Obligations Review. Vodacom hereby confirms its willingness to participate in any further consultative process which the Authority may schedule in respect of this matter.

Yours sincerely

NKATEKO NYOKA

EXECUTIVE DIRECTOR: REGULATORY AND STAKEHOLDER RELATIONS

Vodacom (Pty) Ltd's Written Submission in Response to the Discussion Document on the Review of Universal Service and Access Obligations Framework (Notice 807, Government Gazette 33467 of 17 August 2010)

VODACOM SUBMISSION TO THE DISCUSSION DOCUMENT ON THE REVIEW OF UNIVERSAL SERVICE AND ACCESS OBLIGATIONS FRAMEWORK

INTRODUCTION

Vodacom (Pty) Ltd ("Vodacom") welcomes the opportunity to comment on the Discussion Document on the Review of Universal Service and Access Obligations ("the Discussion Document")¹. We commend the Authority for undertaking this review process and confirm our willingness to participate in any further consultative process which may be undertaken by the Authority in this regard.

Our submission is comprised of two parts: Part A sets out Vodacom's general comments on the overarching framework for Universal Service and Access ("USA") as well as related USA obligations ("USAO") whilst part B details Vodacom's specific comments on the questions posed by the Authority in the Discussion Document

PART A: GENERAL COMMENTS ON THE FRAMEWORK FOR USAO IN SOUTH AFRICA

Government Policy Objectives in respect of USA

Vodacom firmly believes that widely-available, affordable and reliable communications services are a fundamental requirement for economic growth and social cohesion. It is not just that such services are available, but that they are taken up by the population. The World Bank has published research which found that a 10% increase in the penetration of mobile services corresponded with a 0.8% increase in GDP in developing markets.² The effect for internet access and broadband is even more dramatic, with a 10% increase in the penetration of these services corresponding with a 1.2% and 1.38% increase in GDP, respectively. As economic growth tends to benefit all citizens, there is a double benefit to be enjoyed from policies which promote the take up and use of ICT services: more citizens benefit personally from use of ICT, and more citizens benefit generally from economic growth. Accordingly, governments in many countries around the world pursue policies which have the explicit aim of ensuring the universal availability of ICT services.

It is a widely accepted principle that USA is a moving target which is largely influenced by social and economic conditions (including market conditions) that prevail at a particular point in time within a particular country. It follows that the policy objectives that were adopted in 1996 and which underpinned the USAO framework under the Telecommunications Act (Act No. 103 of 1996) may be outdated and no longer relevant.

It is Vodacom's submission that as part of this review, the Authority should take the opportunity to define - in a more concrete manner - the initiatives to be implemented in order to attain the country's objectives for USA in line with the broader policy objectives

¹ Government Gazette No. 33467 dated 17 August 2010.

² Christine Qiang, *Information and Communications for Development* World Bank (2009)

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enunciated under the Electronic Communications Act (Act No. 36 of 2005) ("the ECA"). The government has already determined what constitutes universal access and universal service.³ Further, specific targets have been set as to what constitutes attainment of USA for the country and its many communities. The key thrust of the determination is that all areas and communities must have access to electronic communications (and broadcasting services) that are affordable, usable and meet acceptable quality standards. In addition to the determination on USA, Vodacom has also noted the promulgation of the Broadband Policy for South Africa whose primary objective is "to facilitate the provision of affordable, accessible and universal access to broadband infrastructure to citizens ... and to stimulate the usage of broadband services ...".⁴ However, in order for the objectives set out in both the Ministerial Determination on USA and the Broadband Policy to be achieved, there is a need for identification and subsequent implementation of tangible measures by all industry stakeholders – including the Authority, licensees and other agencies such as USAASA. The process for identification and subsequent implementation of any such measures should be informed by a holistic review which takes into account the significant achievements by private investors and competitive market offerings in ensuring provision of services to the poor and marginalised.

High-level Overview of Implementation of USAOs

Innovative commercial initiatives that have advanced USA in South Africa

It is Vodacom's view that the most effective and efficient manner to ensure wider penetration and provision of services is through promotion of competitive markets. Competition fosters innovation as licensees strive to find most effective ways to provide services and gain a competitive advantage over rivals. The mobile communications services industry has – largely due to fierce competition between licensees in the sector – achieved a great deal in terms of penetration and service provision across the country.⁵ However, there is more that can be achieved through policy makers and regulators adopting policies and strategies that create a regulatory landscape and ecosystem conducive to enabling competitive markets to reach their 'high water mark' in terms of service inclusion.

The following are examples that illustrate what the competitive regulatory ecosystem in the mobile communications sector has been able to achieve over the past years:

³ Ministerial Determination with regard to Universal Access to and Universal Provision of ECS ECNS, Government Gazette No. 32939 dated 8 February 2010.

⁴ Government Gazette No. 33377 dated 13 July 2010

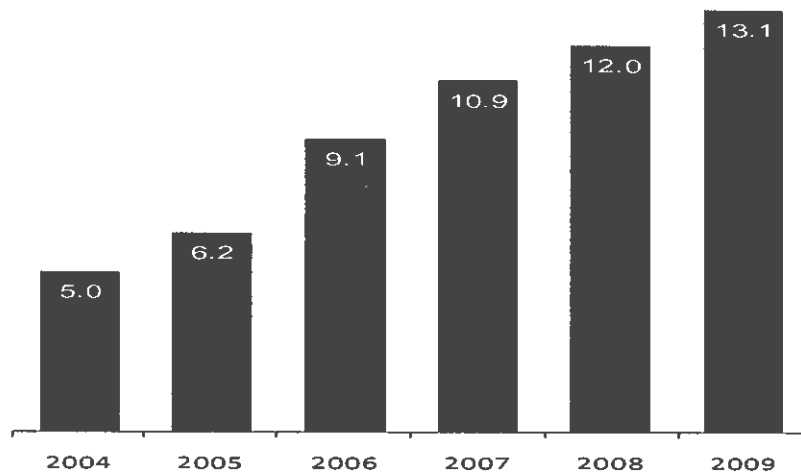
⁵ According to an article published in Business Day on 18 November 2008 "South Africa's telecoms sector has reached a stage where the number of SIM-cards in circulation is roughly equal to the population. This does not mean that everyone has a cellphone as some people have two or three cards, but it means most of the addressable market is covered". This quotation was attributed to Pieter Uys, CEO Vodacom Group Limited.

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- Subsidizing the cost of the SIM card

The cost of the SIM card is heavily subsidized to ensure that costs of gaining access to mobile telephony services are minimized. SIM cards and starter packs are often available at R1 or R2 in most retail shops around the country. The reduction in the cost of SIM cards has seen a 150% increase in the total number of new connections since 2004.

Vodacom annual new connections (Million)



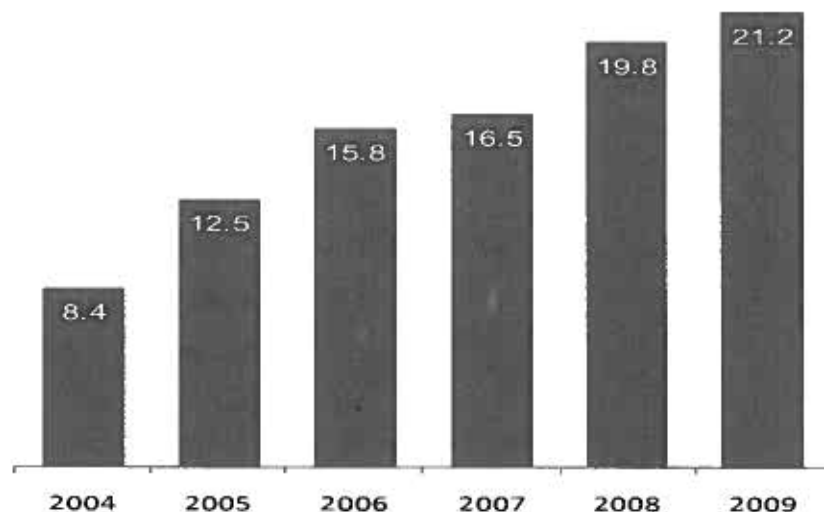
- Facilitating services for the marginal customers

Vodacom has invented unique and revolutionary products for customers who mainly receive calls thus allowing them to remain active in the network:

- Please call me

Free SMS which allow customers to send a message to another customer asking him or her to call them.

Number of "Please call me" SMSs sent per day (Million)



- Reverse charge

A customer can reverse charge a call to another customer. The receiving customer has the option to choose to accept the call and pay for it.

- Call sponsor

Contract customers can sponsor calls from prepaid customers and this call is billed to the contract customers.

All of the above initiatives have made it possible for people who would otherwise not be able to afford the service to have access to services thereby contributing immensely to achievement of universal service and access.

Licence obligations and promotion of USA to date

Vodacom's pre-ECA licence, like many other licensees in the sector, contained USAO's which the company had to fulfil as part of its licence terms and conditions. Vodacom and its competitors are licensed to provide services in a competitive market, in which each operator determines the level at which it is capable of offering services. Competitive markets are very efficient at determining the point at which it is efficient to expend capital in order to provide a service at a particular price. As communications networks feature a very high level of fixed costs, it tends to be a point in which operators price their services to achieve the maximum level of take up while remaining viable.

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The imposition of USAOs was premised on the principle that markets alone will not deliver the level or geographic spread of service provision that Government requires. . To the extent that there may be sections of the community which will not be served by competitive market forces, policy suggests that direct regulatory intervention – such as USAOs – may be required to achieve such service extension. Explicitly, this extension of service is the consequence of a conscious policy decision and, like any element of government policy, should be costed and evaluated.

Though the implementation of these USAOs has - in most respects - been less than effective, there are pockets of success which have made a significant difference to communities and ensured that they have basic electronic communications services. These include *inter alia*

- The roll out of more than 200 000 active Community Service Telephones ("CSTs") located in under-serviced areas and communities which enabled millions of people to have access to voice communications services at lower than commercial rates.
- Provision of internet connectivity and access to public schools – particularly those located in under-serviced areas – is a commendable initiative which, if properly implemented and co-ordinated could make a big difference to the lives of many learners and contribute significantly to the country's competitiveness going forward⁶.

Vodacom believes that, in formulating a new model for USAO under the ECA, the Authority should draw lessons from the previous USAO framework under the Telecommunications Act. In particular, the shortcomings from the pre ECA dispensation which require attention include *inter alia*:

- Imposition of duplicate USAOs on multiple licensees without a co-ordinated framework for implementation
- USAOs that fail to target and address the needs of the identified community and are therefore irrelevant.⁷ In this regards, it is Vodacom's view that the bottom-up and demand led market approach yields more effective results in terms of service provision than centrally planned blanket approach of imposing USAOs.
- Inability or failure to exploit all the resources available for promotion of USAO – including usage of the USAF to fund those services that government policy decided are necessary.

⁶ In terms of Schedule 5 of the now repealed Vodacom's Mobile Cellular Telecommunications Licence (Government Gazette No. 27089 dated 9 December 2004), the company had an obligation to provide internet connectivity to 5000 public schools over a period of 8 years. Due to a variety of challenges, only 700 schools were active and connected as of the date of conversion of the licence on 15 January 2009. These challenges were highlighted to the Authority's research consultants, BMI-T, during the consultative process preceding the publication of this Discussion Document.

⁷ The USAOs imposed on MCTS licensees under their respective 3G and 1800 MHz spectrum licences were characterized by these shortcomings

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What the above factors highlight is that there is a need for a comprehensive assessment of the following:

- (i) The type of service needs which must be covered under the USA initiatives.
This has been determined in terms of the Ministerial Determinations referred to above.⁸
- (ii) The areas / communities that are excluded from the identified service as well as the attributes of such exclusion
In this regard, the Authority still needs to define what constitutes under-serviced areas in terms of section 88(2) and (3). Furthermore, the categories of needy persons must still be determined by the Minister in terms of section 88(3).
- (iii) To what extent can the identified service need be satisfied by competitive service offerings and or other existing initiatives i.e. what measures can be implemented at a policy and regulatory level to enable the market to reach the excluded areas and or communities. In this regard it is important to assess the potential impact of regulatory actions on the ability of the market to serve marginal customers. Regulation which increases costs raises the threshold at which a marginal customer is attractive, so limiting the accessibility of services.

There are various measures that could be taken to make the markets more competitive or to extend the reach of current initiatives on USA. These could include for example – making use of funds currently accumulated in the Universal Service and Access Fund (“USAF”), efficient spectrum allocation and implementation of spectrum policies that promotes stability, innovation and competition in the sector.

- (iv) The potential impact of regulatory actions on the ability of the market to serve marginal customers.
- (v) Finally, if there remain areas / communities whose service needs cannot be met by market or other current initiatives, specifically targeted, appropriate and cost effective USA interventions can be implemented.

Any USAO model that is not premised on the afore-mentioned assessment runs the grave risk of being ineffective and very costly for the country – financially and otherwise.

Rethinking USA and USAOs for South Africa

Vodacom is of the view that the harmonisation of the licensing framework under the ECA has presented an opportunity for the country to rethink and refocus its USA initiatives. The current review is therefore an opportunity to chart a new and appropriate path for the country to achieve its USA objectives. In charting this new approach, the Authority should ensure that

⁸ Government Gazette No. 32939 dated 8 February 2010

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the country is placed in a position to maximise the economic benefits that arise from wide provision of services. As stated above, the World Bank has found that a 10% increase in the penetration of mobile services corresponded with a 0.8% increase in GDP in developing markets⁹, whilst a 10% increase in the penetration of internet and broadband services corresponds to a 1.2% and 1.38% increase in GDP. As such care should be taken to ensure that any new USA policy approach and the overall regulatory framework for the sector facilitate, rather than inhibit, economic growth.

At the same time, it is important that positive learnings from the pre ECA licensing era be harnessed to avoid repeating the same mistakes. However, reasonable progress in achieving USA can only be made if the sector is able to avoid regulatory straitjackets of the past.

A new thinking for USA is particularly important given the government's USA targets in this regard. In particular the US and UA in respect of data ECS will require a break with the past in order for them to be achieved in a sustainable manner. In respect of UA the target is that there must be:

- (i) At least one public broadband internet access point in a geographically founded community of up to 10000 people
- (ii) Access to data ECS at a public access point within a range of two kilometres from any person residing in such a geographically founded community

In respect of US, the target is that:

- (i) The service must be available to 90% of households on demand where such service includes access to broadband as a minimum.
- (ii) The service must be affordable to 60% of households ... and must not exceed 5% of the household's total expenditure
- (iii) The household must be able to use the internet in a month for at least 20 hours which no less than 10 hours are within peak calling rate periods, or the amount of data that may be consumed must be at least 500MB.

Vodacom believes that these and other targets cannot be met simply by imposing USAOs on licensees in the sector. If anything, the pre ECA licensing framework proves beyond doubt that the best tool to achieve penetration of services is through innovative competitive offerings. It may also be useful to exhaust all the other resources which are currently allocated to USA. In this regard, Vodacom submits that the following key issues ought to be addressed in formulating a new USAO framework:

⁹ Christine Qiang *Information and Communications for Development* World Bank (2009)

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Usage of the Accumulated by USAF

The USAF, which was set up under the Telecommunications Act, is believed to have accumulated in excess of R1 billion over the past 13 years. Notwithstanding this, the obligation to contribute to the USAF which is imposed on all licensees in terms of 89 of the ECA and the associated regulations has remained constant.¹⁰

The purposes to which the USAF contributions are to be used are clearly set out under section 88 (read with section 90) of the ECA. What has been lacking to date is a clear framework identifying the beneficiaries (e.g. definitions of needy persons and under-serviced area) and a framework setting out processes and procedures as to how beneficiaries can access the USAF (e.g. how should public schools contemplated in section 88(1)(c) go about applying for USAF subsidies).

Vodacom submits that as part of the process of rethinking the USA, consideration needs to be given to applying the amount that has been accumulated through the USAF. This should be one of the key priorities of the Authority and USAASA. The application of the accumulated funds should be non-discriminatory and transparent in order to ensure that all licensees who contributed to the accumulated USAF have an equal chance to benefit.

Vodacom has noted various media reports suggesting that the USAF may be used to subsidise the cost of set-top boxes for poor households to facilitate the migration from analogue to digital television broadcasting thereby freeing up the digital dividend.¹¹ Though such use of the USAF will not squarely fall under the purposes for which the USAF may be used as contemplated in section 88 of the ECA, Vodacom is not *per se* opposed to the idea. However, this is subject to the proviso that the digital dividend spectrum will remain accessible to all operators who might wish to apply to use it, i.e. all operators will be allowed to bid for the spectrum on fair and equal footing – subject further to the rules on efficient allocation of the spectrum to maximise the benefit to end consumers. Vodacom believes that low frequency spectrum will be a valuable input to the provision of widely available

¹⁰ Government Gazette No. 31499 dated 10 October 2008

¹¹ Migrating from analogue to digital; 1 February 2010. Available at www.communitymedia.org.za/alt-media-resources/130-digital-migration (Accessed 3 November 2010)

Christy van der Merwe "USAF to be used for set-top boxes" 25 September 2009. Available at www.engineeringnews.co.za/article/universal-access-fund-to-be-used-for-set-top-boxes-2009-09-25 (Accessed 3 November 2010)

Chris Forrester: *South African government pumps R780 million into decoders*, Rapid News, 17 February 2009 (<http://www.rapidtvnews.com/index.php/200902173172/sa-govt-pumps-r780m-into-decoders.html>, accessed 10 October 2010)

Paul Vecchiatto: *The USAF may be the answer to DTTV funding woes, but not all is what it seems*, 15 August 2008. Available at www.itweb.co.za/index.php?option=com_content&view=article&id=10278 (Accessed 3 November 2010)

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communications services – including broadband services - which will enhance universal service objectives. However, the use of low frequency spectrum should by no means be restricted only to a single purpose of universal service as that would have a negative impact on investment decisions and wider deployment of low frequency spectrum network and services. *Spectrum Policy Should Promote Achievement of USA Objectives*

The Broadband Policy for South Africa¹² recognises that radio frequency spectrum is a scarce resource and that allocation of spectrum should be guided by developmental objectives in the public interest.

Spectrum is the most important resource in the achievement of USA objectives. It is therefore critical that spectrum policy and related allocation methodologies and processes support the achievement of government's targets and objectives in respect of USA.

o Current Spectrum Policy

One of the objectives of the Radio frequency Spectrum Policy is to promote universal service and access.¹³ In order to achieve the universal provision of services the government does acknowledge that wireless technologies are more appropriate for the provision of electronic communication services in rural areas due to the population distribution, lack of infrastructure and terrain. It is therefore critical that the allocation of spectrum reflect this stated policy.

o Innovative use of spectrum to advance USA

A technology neutral licensing framework provided by the spectrum policy enables licensees to choose efficient innovative technologies to achieve the objectives of expanding wireless broadband networks to rural areas.

o Challenges of spectrum hoarding

The Radio Frequency Spectrum Policy, 2010 requires that the use of the radio frequency spectrum must promote the roll out of services in under serviced areas using various technologies. This is in line with government's policy objective of promoting the universal provision of electronic communications services and connectivity for all.

Vodacom believes that Spectrum hoarding serve to undermine this policy objective since operators tend to hold on to the allocated spectrum without using it. Further it serves to deny access to those who are capable of making better use of this scarce natural resource with the result that underserved communities and areas are denied access.

¹² Government Gazette No. 33377 dated 13 July 2010

¹³ Government Gazette No. 33119 dated 16 April 2010

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Vodacom recommends that the Authority adopt a number of initiatives to ensure the universal provision of ECS and ECNS services:

- The Authority should adopt the 'use it or lose it principle' which will force operators to review their spectrum needs and give up surplus spectrum.
- Facilitate the deployment of innovative broadband technologies - including the principle of allocation of frequencies in a way that facilitates new entry into the market
- The Digital dividend

Access to the freed up spectrum is believed to be of paramount importance in ensuring the rollout of wireless broadband services to the underserved areas. In this regard the increased rollout of mobile broadband, especially in the under serviced areas, will depend on the allocation of at least 25% of the spectrum currently used for analogue TV to providers of mobile services. Research shows that the allocation of a portion of the digital dividend spectrum will allow mobile operators to bridge the digital divide by rolling out services to under serviced areas using low frequency band.¹⁴ On the strength of the benefits that might be derived from the digital dividend spectrum it is crucial that the Authority act quickly to decide on how the freed up spectrum will be assigned. Vodacom recommends that the process for assigning the digital dividend spectrum should be fair and transparent and afford all licensees an equal opportunity to access the spectrum, thereby fostering competition.

Other Innovative Measures to Promote USA

- Network sharing

The high terrain and the lack of infrastructure that enables licensees to deploy networks to underserved areas make it difficult for some of the operators to roll out services to these areas. The situation is exacerbated by the high roll out costs. Traditional network sharing has also proved to be ineffective since it is only limited to passive infrastructure sharing such as sites, masts, power, and air condition. Vodacom recommends that the Authority should consider adopting measures that will encourage and facilitate the sharing of active network elements from access to the core network including spectrum pooling.

- Implementation of section 90 of the ECA

Vodacom believes that the objectives of universal service and access could be achieved through the use of a competitive tendering process. A well coordinated tendering process would allow USAASA to identify communities that require services, the subsidy that is required

¹⁴ GSMA: "Digital Dividend for Mobile: Bringing Broadband to All", 2009 (<http://www.gsma-mobilebroadband.com/upload/news/files/05032009135612.pdf>, accessed 11 October 2010)

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to rollout the required services and whether there are operators servicing the area. As stated in the discussion below, it is critical that the framework for invitation, evaluation and awarding of USAF competitive tenders as contemplated in section 90 of the ECA be put in place.

Vodacom's Recommended USAO Framework

Vodacom has considered the different proposals by the Authority on an appropriate USAO framework. It is Vodacom's submission that a blended USAO framework is the most appropriate for the country given the current market developments. The key features of the proposed model would include *inter alia*:

- o Formulation of a holistic USA strategy by the Authority – in consultation with USAASA and other key stakeholders. The Authority would retain the power to impose licence conditions pertaining to USAOs as provided for under the ECA. However, such USAOs must be specifically targeted to attain the identified strategic objectives.
- o USAASA should retain its responsibility for managing and administering the USAF in accordance with applicable regulations as formulated by the Authority. However, it would be critical that the accountability pertaining to the USAF be improved. USAASA should – as part of managing and administering the Fund – be obliged to account to the industry on matters such as the total amount collected per year, amount allocated to projects, etc

As stated above, the USAF has not been efficiently utilised over the past years. Vodacom believes that empowering USAASA to have an ultimate say in the allocation of funds would result in the speedy distribution of funds to identified projects.

- o It may be necessary to effect legislative changes to the ECA in order to improve USAASA's oversight of the USAF and ensure accountability for its usage. In this regard, it is Vodacom's view that management of the USAF should be based on international best practice which requires that such schemes should be based on objective, transparent and non-discriminatory criteria to ensure proportionality and least market distortion.¹⁵
- o There should be a clear distinction made between the Government's desire to achieve universal service and the role of the market. Licensed operators should be freely able to determine where it provides service on the basis of commercial factors within a

¹⁵ Refer to EU Framework - Commission Directive of 2002 on USO and Competition in the market for ECS and ECNS.

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competitive market, with service extension to commercially unviable areas funded through the USAF.

- o No additional USAOs should be imposed on licensees. However, all licensees must continue making contributions to the USAF as required under the ECA and associated regulations. Further, USAOs that were carried over into the new licence regime must – subject to holistic review to determine relevance, appropriateness, practicality etc - be maintained with a specific deadline for final implementation. Where USAOs carried over are found to be irrelevant, inappropriate and impractical to be implemented, they must be specifically expunged from the terms and conditions of licensees' licences.
- o The necessary framework for invitation, evaluation and awarding of USAF competitive tenders as contemplated in section 90 of the ECA must be put in place. This should allow USAASA to identify and assign projects to operators who can best rollout services to US areas at low prices. The tenders should be specifically targeted to address the needs of identified communities or areas that are deemed to be not only under-served but also unprofitable for competitive operators to serve in the short to medium term.

PART B: SPECIFIC COMMENTS ON THE QUESTIONS POSED BY THE AUTHORITY IN THE DISCUSSION DOCUMENT

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 should carry such obligations*

Should licensees continue to carry USAOs?

Experience shows that the mobile industry, operating through competitive markets, has been successful at putting reliable, affordable communications into the hands of citizens. All the telephone-starved customers are captured by the mobile operators and the customers now have preference for mobile service. This has been achieved through private investment, with operators taking commercial decisions. At the same time fixed line telephony is losing momentum in under serviced areas.¹⁶ Against this background there is a need for the Authority to undertake a review to determine the extent to which USAOs are still relevant. It is Vodacom's view that most of the USA needs will be addressed through the creation of an enabling environment that encourages increased competition in the sector.

However, Vodacom recognises the provisions of section 8(4) of the ECA which states that the Authority has the discretion to designate specific licensees for imposition of USAOs. Vodacom

¹⁶ Paul Reynolds et al, *Reforming Universal Service Policy*, a Report for GSM Europe, February 2008

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submits that unlike under the pre-ECA framework, the Authority's exercise of this discretion must be informed by a holistic review of current and future market developments as well as specifically identified USA needs.

Should broadcasters carry USAOs?

Vodacom does not wish to comment in much detail on broadcasting matters suffice to state that the Authority should draw a clear distinction between person to person communications (voice and data) and broadcasting. When considering broadcasting policy, the Authority should recognise the role that broadcasting plays in informing the population, and the need to maintain appropriate levels of plurality and representation; these factors are not relevant to personal communications. In the midst of the evolving trend towards free market competition and where paid broadcasting is gaining popularity there is a strong need to impose USOs to guarantee broadcasting rights of minority groups.

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 USAO or not?

In determining whether a particular licensee or licence category must carry USAOs the following factors needs to be taken into account:

- o Extent to which identified services could be provided through a competitive tendering process without the need to impose USAOs on licensees;
- o Access gaps and under-served areas that still need to be served;
- o Extent to which the needs of people with disabilities have been met;
- o Availability of a particular service in the under serviced area and the extent to which its provision will address problems of social exclusion.

15.1.2.2 Which licensee (ECNS, ECS or BS) must carry the USAOs, taking into account the answer to 12.2.2.2? (You are requested to provide reasons for your answer)

Vodacom recognises the general desire to build a people-centred inclusive and developmental oriented information society where everyone can access, utilize and share information and knowledge. Access to electronic communication services, including broadcasting, is a critical enabling agent in building that information society. As the World Bank has found, improved take up of modern ICT services yields economic benefits, more so in developing economies than in developed economies. Failure to ensure access will deprive citizens of accessibility to the many benefits of basic and advanced communications which include improved healthcare, education and economic opportunities.

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This is not to argue for mandatory USAOs to be imposed in licensees. Such USAOs increase the cost base of service providers and make it less attractive to serve marginal customers of the sort that universal service policies are designed to address. The result of such obligations is to impose arbitrary and possibly irrelevant targets, rather than let licensees respond to the actual needs of South African consumers, as expressed in market demand. The evidence of this can be seen in the failure of the existing USAOs to deliver genuine benefits for South African citizens, whereas competitive markets have been effective. Imposition of specific USAOs on licensees risks making such USAOs subject to a defined technology, limiting the flexibility for alternative providers to satisfy the government's universal service objectives at a lower cost.

Vodacom disagrees with the imposition of specific USAOs that are tied to licences, as these are likely to distort competition and prevent the market from responding flexibly to the needs of South African citizens.

15.1.2.3 Should all licensees or some licensees continue to carry USAOs? Please indicate what should be the role of licensees who no longer carry out USAOs? (You are requested to provide reasons for your answer)

Please refer to comments above. Vodacom is of the view that it should not be mandatory for any licensees to carry USAOs. Further, the Authority is not obliged to impose USAOs on any licensees under the ECA. The ECA merely provides the Authority with discretionary powers to impose USAOs on specifically designated USAOs. Vodacom submits that the Authority should, rather than focus on imposition of USAOs, focus on creating an enabling environment for competitive offering of services. Where competition is found to fall short – i.e. in respect of areas or population segments that are not commercially viable to serve – USAF tendering process should be implemented to fund service extension to those areas or population segments.

15.1.2.4 Do you submit that licensees falling within the same category of a licence should 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

The principle of equality requires that licensees in the same position should be treated equally. The ECA does recognise the concept of substantive equality, i.e. treatment of similarly placed licensees alike, by providing that the “Authority may amend an individual licence after consultation with the licensee to make the terms and conditions of the

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individual licence consistent with the terms and conditions being imposed generally in respect of all individual licences of the same type" (section 10(1)(a)).

However, Vodacom cautions against obsession with imposition of USAOs. As stated above, imposition of USAOs is a discretionary power under section 8(4) and should, based on current market developments, be imposed as a very last resort. In such an event, it is recommended that the Authority justifies the imposition of USAOs by showing why market forces would not deliver the requisite services covered by the USAOs and why the competitive tender process contemplated under section 90 of the ECA would not be a suitable mechanism to achieve the objective sought to be achieved via the USAOs.

Nevertheless, where USAOs are imposed, care should be taken to avoid unnecessary duplication in the name of parity by imposing exactly the same USAOs on licensees. Parity could be ensured via for example ensuring that the USAOs imposed on similar licensees are equivalent in terms of their cost of implementation.

15.1.3 What approach should be adopted in respect of USAOs obligations imposed under the Telecommunications Act which were not carried over into the converted licences issued under the EC Act? You are also requested to consider what should happen to those obligations which were not carried over into the converted licence

Vodacom submit that only USOs which have actually been practically rolled out by licensees and which were still operational as of the effective date of new licence regime are considered to be valid *pending the review by the Authority*, i.e only those USAOs that have been fulfilled need to be maintained. In the case of Vodacom these USAOs would include for example, schools provided with internet connectivity under the 3G USO framework. Any USAOs that were still outstanding (i.e. not implemented) at the time of licence conversion are, by virtue of section 93(5)(b) of the EC Act, of no force and effect under the ECA licence regime. This is based on the provisions of clause 4 of Vodacom's I-ECNS licence which states that "licensees shall continue to maintain previously implemented USOs until reviewed by the Authority ..."

It is thus Vodacom's view that only USAOs which were implemented as of the date of conversion of licences were carried over under the ECA licence regime. USAOs which were not implemented are of no force or effect in terms of section 93(5)(b) of the ECA.

15.1.4 What kind of obligations must be imposed on 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 the existing obligations that individual licensees have to carry. You are requested to deal with BS licensees separately in your answer

Please refer to comments above – Vodacom does not believe that USAOs should be imposed as a matter of course without assessment of whether or not they are required. It is our submission that USAOs should only be implemented as a very last resort and only in instances where the Authority can show that market forces and or the USAF tenders will not deliver. The nature of the USAOs should thus depend on the type of service need sought to be addressed.

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

USAASA is tasked with the responsibility of promoting the goals of universal access and service in under serviced areas of South Africa. It is required to achieve this by, *inter alia*; fostering the adoption and the use of new methods for attaining universal service and access, advising policy-makers and the Authority on appropriate schemes to provide universal service and access, fostering the adoption of new methods for attaining universal access and service and making recommendations to the Minister of Communications relating to determination of what constitutes universal service and access by all areas and communities in South Africa.

At best USAASA's role in the USA process or system can be summarised as follows:

- It conducts research into aspects of USA and advice both the Minister and the Authority on *inter alia* what constitutes US and UA, mechanisms to be employed to achieve US and UA etc.
- The Minister formulates policy on US and UA
- The Authority promulgates regulations on implementation of UA and US e.g. collection of USAF contributions, defining under-serviced areas etc
- USAASA manages the USAF and is responsible for efficient utilisation of the USAF in implementing initiatives aimed at promoting US and UA.

Conversely the MDDA was established under a different piece of legislation - the Media Development and Diversity Agency Act No. 14 of 2002 ("MDDA Act") with the broad

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objective of promoting development and diversity in the South African media¹⁷ and in particular to *inter alia*; encourage ownership and access to media by historically disadvantaged communities, encourage development of human resources and capacity building within the media industry, and encourage channelling of resources to the community media and small commercial media. In terms of the MDDA Act only projects that serve to promote the objectives of the MDDA are eligible for funding and such projects include community media projects, small media commercial projects, training and capacity development in all areas of media production and distribution, media research projects etc.

The ECA only refers to the MDDA once – in section 89(3) which entitles broadcasting licensees to off-set their MDDA contributions against the USAF contribution. The MDDA Act contains no reference to the ECA.

There appears to be no link whatsoever between the MDDA and USAASA. Neither does there seem to be any coordination in their activities.

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 licences and those that were carried over into the converted licences, where applicable, and new ones which were imposed upon conversion of the licence, where applicable?

See Vodacom's response to question 15.1.3

15.1.7 Must licensees continue to make contributions into the USAF?

Vodacom is of the view that the continued collection of USAFs without a clear programme for the utilisation of funds is a fruitless exercise. Licensees continue to make contributions to USAF without any plan on how the funds will be utilised. In the main, contributions made to the fund have become part of the general monies collected by the state and subject to appropriation in accordance with general government priorities. As a matter of principle contributions to the fund must be based on an understanding of what initiatives are required to be undertaken to achieve universal service and access and how much funding such initiatives will require. Failure to come up with a clear programme will result in more funds being collected and lost into the national revenue fund.

¹⁷ The phrase 'media' is defined in section 1 of the MDDA Act as 'all forms of mass communication, including printed publications, radio, television and new electronic platforms for delivering content'.

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

It is Vodacom's view that the current level of licensee contributions to the USAF is sufficient - subject to the proviso that there needs to be a clearly defined framework on how it can be accessed to fund projects aimed at addressing clearly defined US and UA needs. Any review of the current contribution should be premised on a thorough assessment with regards to:

- o the nature and extent of universal service obligations (including USAF contributions) currently imposed on licensees;
- o the amount collected to date by the USAF, the amount already allocated (and that which remains unallocated) and the projects to which it has been allocated;
- o the amount likely to be collected by the USAF going forward under current level of contribution;
- o the nature and extent of the areas which still require (or will require) targeted universal service and access intervention under the ECA market structure and thus funding from the USAF;
- o the number of licenced entities; and
- o the nature and types of universal service and access intervention mechanisms required to address the areas which still require targeted universal service and access intervention and the costs estimate related thereto.

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

As stated above, Vodacom is of the view that licensees will – with increased competition and an enabling regulatory environment - continue to meet USA needs through competitive service offerings.

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

Vodacom submits that the consideration be given to the following concepts and terms:

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- *Definition of Universal Service:*

Section 1 of the ECA defines universal service to mean "the universal provision of electronic communications services and broadcasting services as determined from time to time in terms of chapter 14".

The provision of ECS is intrinsically linked to the availability and provision of electronic communications network services ECNS. Without ECNS there can be no provision of ECS. It is for this reason that the definition of universal access makes reference to both ECS and ECNS

Vodacom proposes that the definition of universal service should also make reference to ECNS. In this regard the definition of universal service should be amended to mean "the universal provision of electronic communications services, **electronic communications network services** and broadcasting services as determined from time to time in terms of Chapter 14"

- The concept of "needy persons" as contemplated in section 88(1)(a) and 88(4) is yet to be defined
- The definition of "under-serviced area" as required under section 88(2) and (3) is still outstanding
- Section 90 to be amended to allow all licensees (including licence applicants) to participate in the competitive tendering process for US and UA projects.

15.1.9 Which method has to be used in defining or amending such terms and/or concepts, including whether in the EC Act itself, by ICASA, USAASA or any other relevant institution

The normal process for legislative amendment as enshrined in the constitution should be followed in amending the ECA, ICASA Act or any national legislation. The process for promulgating regulations or amending existing regulations to include required definitions should follow the process outlined under section 4 of the ECA.

15.2 IMPLEMENTATION ISSUES

15.2.1 Would you submit that the current USAOs' implementation system needs to be maintained (in the absence of a move towards a new model?) In this regard, you are requested to express your views also on the initial process for the development and determination of the USAO and the processes for the co-ordination and the actual rollout of the USAOs

Vodacom maintains the view that the increased number of licensees in the market is likely to extend the boundaries of commercial offerings to cover areas previously deemed unprofitable and under-serviced with the result that there might be a reduction in the

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number and extent of areas or communities requiring targeted universal service and access measures.

With an increase in the number of licenced entities there seems to be significant potential for availability of electronic communications services in rural and remote areas. Whether this potential materialises will depend importantly on the removal of disincentives to invest and barriers to entry (including those due to spectrum policy that generates artificial scarcity).

In this regard there is a need for the adoption of a new implementation strategy which entails the exhaustion of commercial offerings prior to any regulatory intervention. This requires the identification of barriers to the provision of services to mainstream customers from competitive markets with the aim of ensuring that competitive markets reach their full potential in terms of customer inclusion. Where there are barriers to service provision the Authority should endeavour to reduce those barriers and ensure that competitive markets reach their full potential in terms of customer inclusion. Once competitive forces have failed only then can the Authority consider universal service/access regulation to achieve the universal provision of services.

USAOs should thus not be viewed as a central feature of the licensing framework.

15.2.4 As stated in the ECA, should only the ECNS licensees be eligible for the competitive tendering process for US and UA projects?

Research shows that a competitive tendering process, which is properly designed, can generate incentives to contain costs, to promote innovation and to reveal the true cost of delivering universal service thus minimising the subsidy required. It also allows for the proper identification of areas and communities that require services.¹⁸

It is Vodacom's view that the key to ensuring US and UA is ensuring availability of infrastructure. It is only when the requisite infrastructure is available that innovative service competition can take place. In this context, it is commendable that the primary target for USAF subsidy should be infrastructure based offerings as opposed to pure service offerings. Though it is conceivable that there may be instances where despite availability of infrastructure there may be no service offerings or there may be poor take-up of service offerings, such instances will be limited. Even where they exist, the most optimum manner to address such lack of service take-up or usage would be through user subsidies in

¹⁸ The World Bank, *Financing Information and Communication Infrastructure Needs in the Developing World: Public and Private Roles*, Draft for discussion, February 2005.

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accordance with the model developed for subsidisation of needy persons as contemplated under section 88(1)(a) read with section 88(4).

15.2.4.2 *If no:*

(a) Should other licensees who carry USAOs also be considered?

Vodacom believes that all licenced entities should be considered for and be afforded the opportunity to participate in the competitive tendering process whether or not they carry USAOs.

(b) Should this be broadened to include other non-licenced contenders as a way of opening up the market further?

Vodacom supports a tendering process that includes non-licenced entities to tender for universal service and access projects subject to the proviso that - where such entities will, upon successfully winning the tender, be required to provide licensed services – they obtain the requisite licences prior to provision of such services.

15.3 POLICY ISSUES

15.3.1 As regards the recommended model, can it be implemented under the existing provisions of the ECA?

It is Vodacom's view that the key provisions of the ECA which are aimed at facilitating US and UA have not been adequately implemented. For example no framework has been developed for section 90 tenders; the definition of needy persons and under-serviced areas are still outstanding; the framework for public schools to access the USAF for subsidies for procurement of ECS and broadcasting services has not been formulated etc. It is Vodacom's view that the need for amendment of the ECA for purposes of attaining US and UA is not urgent – instead what is required is a more holistic implementation of the current provisions of the ECA.

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

Please refer to all the comments above.