



Submission to ICASA: “Discussion Document on The Review Of Universal service and Access Obligations Framework (USAO’s)”

Government Gazettes No. 33467, Notice 542, 17 August 2010

Submission Date: 12 November 2010

1. INTRODUCTION

- 1.1 During August 2010, the Independent Communications Authority of South Africa (hereinafter referred to as “the Authority”), issued a discussion document, as part of an inquiry to review the existing framework for Universal Service and Access, as well as obligations.
- 1.2 In the first quarter of 2010, BMI-TechKnowledge (BMI-T) was commissioned to conduct a review of the Universal Service (“US”) and Universal Access (“UA”) framework within the sector. As part of this process, questionnaires were circulated to various communications operators requesting detailed information on all obligations attached to the respective licences. The information collated from this exercise has been incorporated into the report.
- 1.3 The discussion document published by the Authority is predominantly influenced by the contents of a review report¹ (hereinafter referred to as “the Report”) prepared by BMI-TechKnowledge (“BMI-T”).

¹ “*Review of Universal Service and Obligations*” for ICASA by BMI-TechKnowledge, Mkhabela Huntley Adekeye Inc. and Martyn Roetter for the International Review, dated March 2010.

- 1.4 Neotel commends the consultant for the content of the report, which has provided excellent insight into the current status of universal service and access obligations.
- 1.6 The review covers universal service and access obligations imposed during the dispensation under the Telecommunications Act² as well as post implementation of the Electronic Communications Act.
- 1.7 In addition to highlighting the various sets of obligations attached to the respective licences, the report provides an historical analysis of the allocation process and the challenges experienced by each operator in discharging the obligation.
- 1.8 The report also provides a comparative study of various international trends in respect of policy formulation, implementation and sources of funding for UA and US.
- 1.9 Based on the analysis conducted, a range of universal service and access models have been proposed together with a recommendation on an appropriate model for South Africa.
- 1.6 Neotel believes that adopting an appropriate universal service and access model is fundamental in addressing the disparities that exist between urban and rural segments of the population in terms of teledensity penetration.
- 1.7 Neotel thanks the Authority for the consultative approach adopted in policy matter that is long overdue.
- 1.8 The format of this submission includes some general comments with a focus on factors that impact on the implementation and success of universal service and access policies, suggesting that these factors be duly considered in formulating a new framework. The funding mechanism for rolling-out universal services is key success factor in attaining policy goals.
- 1.9 During September 2010, the Authority had issued a draft regulation addressing the contributions to the Universal Service Fund³. This discussion document also calls for comments relating to the Fund and to this extent Neotel would like to supplement this submission with the submission made in response to the draft regulations. A copy of the submission is attached for ease of reference.
- 1.10 Included in the detail of the submission are responses to the questions raised in the discussion document.

² Telecommunications Act No.103 of 1996

³ Contained in Government Gazette No.33557, published on the 16 September 2010.

2. GENERAL COMMENTS

2.1 GUIDING PRINCIPLES FOR DEVELOPING UNIVERSAL SERVICE AND ACCESS STRATEGIES

- 2.1.1 On a global scale generally, US and UA frameworks have been identified as an effective mechanism to address the lack of penetration of Information and Communications Technologies (“ICT”) in economically disadvantaged areas.
- 2.1.2. While developed countries have had success in bridging this gap more easily, developing countries continue to experience challenges. There are certain critical factors that enable the successful implementation of universal service and access strategies.
- 2.1.3 Universal service and access policies should be formulated on certain core principles, taking cognizance of the fact that each country has its own unique socio-economic characteristics and challenges.
- 2.1.4 In developing strategies to achieve the desired goals and objectives, some key principles to be considered are the following:
- (a) Any framework that is developed should be based on a “needs analysis” assessment conducted in the relevant environment where the policy is to be implemented;
 - (b) The target market / benefactors of the policy must be clearly identified;
 - (c) Policy must also provide clarity on the nature and form of access or service to be provided in terms of the obligation;
 - (d) Establish a transparent and equitable methodology for allocating obligations;
 - (e) Conduct periodic reviews to evaluate the impact and effectiveness of the policy taking into consideration the changes in the market dynamics;
 - (f) Ensure non-discriminatory access to available funding irrespective of the funding mechanism;
 - (g) Defining the roles and responsibilities of the institutions responsible for implementation, evaluation and monitoring of such policies.

- 2.1.5 Consideration of these principles will ensure meaningful and obtainable goals are set and policy objectives are met.

2.2 UNIVERSAL SERVICE AND ACCESS WITHIN THE CONTEXT OF THE ECA⁴

- 2.2.1 Prior to the ECA, the Telecommunications Act empowered the Minister to develop policies on matters consistent with the objects of the act, which included Universal Service and Access.

- 2.2.2 This power has been retained under the provisions of the ECA , which includes defining the parameters for universal service and access.

- 2.2.3 The objectives stipulated in the ECA reinforces the National focus on UA and US which is articulated in section 2 (c) as follow:

“promote the universal provision of electronic communications network and electronic communications services and connectivity for all.”

- 2.2.4 Not only does the act envisage the formulation of a policy, but also gives the Authority the power to impose obligations, promoting the implementation of the policy.

- 2.2.5 In assigning powers to both the Minister and the Authority, the objects of the Act provides for clarification of their responsibilities by requiring ***“a clear allocation of roles and assignment of tasks between policy formulation and regulation within the ICT sector”***.

- 2.2.6 In attempting to demystify, the roles and responsibility of the respective legislative institutions, the relevant provisions of the Act, must be carefully scrutinized. The discussion that follows considers the roles of the Minister, the Authority and the Universal Services and Access Agency of South Africa as contemplated in the ECA.

2.3 THE ROLE OF THE MINISTER

⁴ Electronic Communication Act, No 36 of 2005

- 2.3.1 Chapter two⁵ of the ECA sets out the parameters governing the “policy making” powers of the Minister. Section 3 (1) (b) makes specific mention of a universal service and access policy.
- 2.3.2 By implication the formulation of the policy falls squarely within the jurisdiction of the Ministry.
- 2.3.3 The content of the policy however, should be informed by research and studies conducted by the Agency. This is dealt with in more detail in the discussion on the role of the agency.
- 2.3.4 In formulating such policy, due consideration will be given to the National imperatives for the country that set are by Government.
- 2.3.5 The focus of the policy however would be directed at ensuring that economically disadvantaged areas or communities that have historically been excluded, now also receive the benefits of innovative developments in the ICT sector.
- 2.3.6 The establishment, management and effectiveness of a Funding mechanism to support and sustain the universal service and access initiatives are significantly influenced by policy.
- 2.3.7 A well-developed policy is the cornerstone of success in achieving the goals of universal service and access.

2.4 THE ROLE OF THE AUTHORITY

- 2.4.1 Whilst the role of the Ministry is to formulate policy, the Authority’s role is to ensure effective implementation of the policy.
- 2.4.2 In most instances the policy translates into some form of regulation, promulgated by the Authority.

⁵ Chapter 2, Section 3(1) The Minister may make policies on matters of national policy applicable to the ICT sector, consistent with the objects of the Act and of the related legislation in relation to-

- (a) the radio frequency spectrum;
- (b) universal service and access policy;

- 2.4.3 The provisions of section 8 of the ECA, mandates the Authority to prescribe terms and conditions that are applicable to Individual and Class licences, which conditions may vary according to the type of licence category.
- 2.4.4 Section 8 (2)⁶ (g) pertains to conditions imposed that are specific to universal service and access obligations.
- 2.4.5 The Authority's power to impose any additional obligations is linked by section 8 (3)⁷ to chapter 10, which caters primarily for "Competition Matters".
- 2.4.6 Section 67 (8) (3)⁸ however, compels the Authority to conduct a review in the form of an assessment of the prevailing pro-competitive conditions in the sector preceding the introduction of any additional obligations.
- 2.4.8 These provisions read collectively prevail upon the Authority to consider market forces and to ensure that any conditions that may be imposed are proportional to the dynamics of the market.
- 2.4.9 The Authority also has the power to determine the percentage of the contribution payable by Licensees, in terms of section 89 (2)⁹ of the Act.
- 2.4.10 The obligation to monitor compliance against the obligation currently falls within the ambit of the Authority by virtue of the compliance regulations. The regulations require bi-annual reporting on compliance, however there has been no assessment of the reports conducted by the authority. This is supported by the BMI-T, compliance review report.
- 2.4.11 Although the Authority has a range of powers in terms of the provisions cited above, more importantly it has a discretionary power to introduce obligations.

⁶ Section 8 (1) The Authority must prescribe standard terms and conditions to be applied to individual licences and class licences. The terms and conditions may vary according to the different types of individual licences and, according to different types of class licenses.

(2) Such standard terms and conditions may take into account –

(g) any universal access and universal service obligations;

⁷ Section 8(3)-The Authority may prescribe additional terms and conditions that may be applied to any individual licence or class licence taking into account the provisions of chapter 10.

⁸ Section 67(8) (3)- *Review of pro-competitive conditions:*

(a)Where the Authority undertakes a review of the pro-competitive conditions imposed upon one or more licensees under this sub-section, the Authority must-

(i) review the market determinations made on the basis of earlier analysis; and

(ii) decide whether to modify the pro-competitive conditions set by reference to a market determination.

⁹ Section 89 (2) The Authority must prescribe-

(a) the basis and manner of determination of such contributions, which must not exceed 1 per cent of the Licensees annual turnover or such other percentage of the licensee's annual turnover as may be determined by the Minister after consultation with the affected parties, by notice in the Gazette; and

(b) the dates when such contributions become payable and the manner in which they may be paid.

- 2.4.12 Historically, the trend has been to exercise this power has been exercised in an arbitrary manner, where the choice of obligations was not informed by any policy guidance or recommendations from the Agency.
- 2.4.13 We therefore propose that under the revision process, the approach to be adopted by the Authority should be guided by the research and recommendations of the Agency, as this is the core function of the agency.

2.5 ESTABLISHMENT AND ROLE OF THE UNIVERSAL SERVICE AND ACCESS AGENCY OF SOUTH AFRICA (“USAASA”)

- 2.5.1 The ECA has retained the establishment of an Agency¹⁰ to assist in achieving the objectives of the policy.
- 2.5.2 The Agency plays a crucial role in facilitating and monitoring implementation.
- 2.5.3 Since the inception of the establishment of an Agency, the role and responsibility of the Agency has been somewhat misconstrued.
- 2.5.4 The ECA however is unambiguous in setting out the mandate of the Agency.
- 2.5.5 Section 82¹¹ of the Act goes to great lengths to elaborate the role of the Agency in its interaction with the Minister and the Authority.

¹⁰ Section 80-Continued existence of Universal Service Agency

80(1) Despite the repeal of the Telecommunications Act by this Act, the Universal Service Agency established in terms of section 58(1) of the Telecommunications Act continues to exist as a juristic person in terms of this Act and will henceforth be called the Universal Service and Access Agency of South Africa.

¹¹ Section 82 – Functions of the Agency

- (1) The Agency must-
- (a) strive to promote the goal of universal access and universal service;
 - (b) encourage, facilitate and offer guidance in respect of any scheme to provide-
 - (i) universal access or universal service; or
 - (ii) telecommunications service as part of reconstruction and development projects and programmes contemplated in section 3(a) of the Reconstruction and Development Programme Fund Act 1994 (Act No. 7 of 1994), where such provision will contribute to the attainment of the object of the project or programme in question; and
 - (c) foster the adoption and use of new methods of attaining universal access and universal service.
- (2) For the purpose of subsection (1)(b)(ii), reference to telecommunication service in relation to development projects and programmes contemplated in section 3(a) of the

- 2.5.6 The Agency has a continuing task of conducting up to date research, surveying and evaluating the developments within the sector that impact on universal service and access.
- 2.5.7 The outcomes of the various functions that the Agency performs and the information gathered should actually be used to inform policy and provide the Authority with guidance in identifying practical and reasonable obligations.
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- Reconstruction and Development Programme Fund, 1994, must be regarded as reference to electronic communications network services under this Act.
- (3) (a) The Agency must from time to time, with due regard to circumstances and attitudes prevailing in the Republic and after obtaining public participation to the greatest degree practicable, make recommendations to enable the Minister to determine what constitutes-
- (i) universal access by all areas and communities in the Republic to electronic communications services and electronic network services; and
 - (ii) the universal provision for all persons in the Republic of electronic communication services and access to electronic networks, including any elements or attributes thereof.
- (c) Such a determination –
- (i) Must be published in the Gazette; and
 - (ii) May be amended or substituted by the Minister on the recommendation of the Agency as provided for in this section.
- (4) The Agency-
- (a) may undertake such investigations into matters relating to its functions as it may consider necessary;
 - (b) must conduct research into and keep abreast of developments in the Republic and elsewhere on information communication technology, electronic communications facilities;
 - (c) must continually survey and evaluate the extent to which universal access and service have been achieved;
 - (d) may issue information from time to time on the provision of electronic communication services and electronic communication networks in the Republic and access thereto;
 - (e) must, when so requested by the Minister, make recommendations to the Minister in relation to policy on any matter relating to universal service and universal access;
 - (f) must, when so requested by the Authority, advise the Authority on any matter relating to universal access and universal service;
 - (g) must continually evaluate the effectiveness of this Act and things done in terms thereof towards the achievement of the goal of universal access and universal service;
 - (h) may liaise, consult and co-operate with any person or authority;
 - (i) may appoint experts and other consultants on such conditions as the Agency may determine.
- (5) The Agency must manage the Universal Service and Access Fund in accordance with the provisions of this Chapter.

- 2.5.8 The Act does not envisage the role of the Agency to engage in providing communication facilities or rolling-out of centres to the so called “under-serviced areas.
- 2.5.9 An important part of the mandate of the Agency is to manage the Fund and identify projects that qualify for assistance from the Fund.
- 2.5.10 Within the revised framework, the Agency would be required to consolidate an operational plan, which would also include a defined process for access to the USAF. To this extent the Agency should set targets to monitor ensure progress and effectiveness of the plan.

2.6 STRUCTURE AND MANAGEMENT OF THE UNIVERSAL SERVICE FUND (“USAF”)

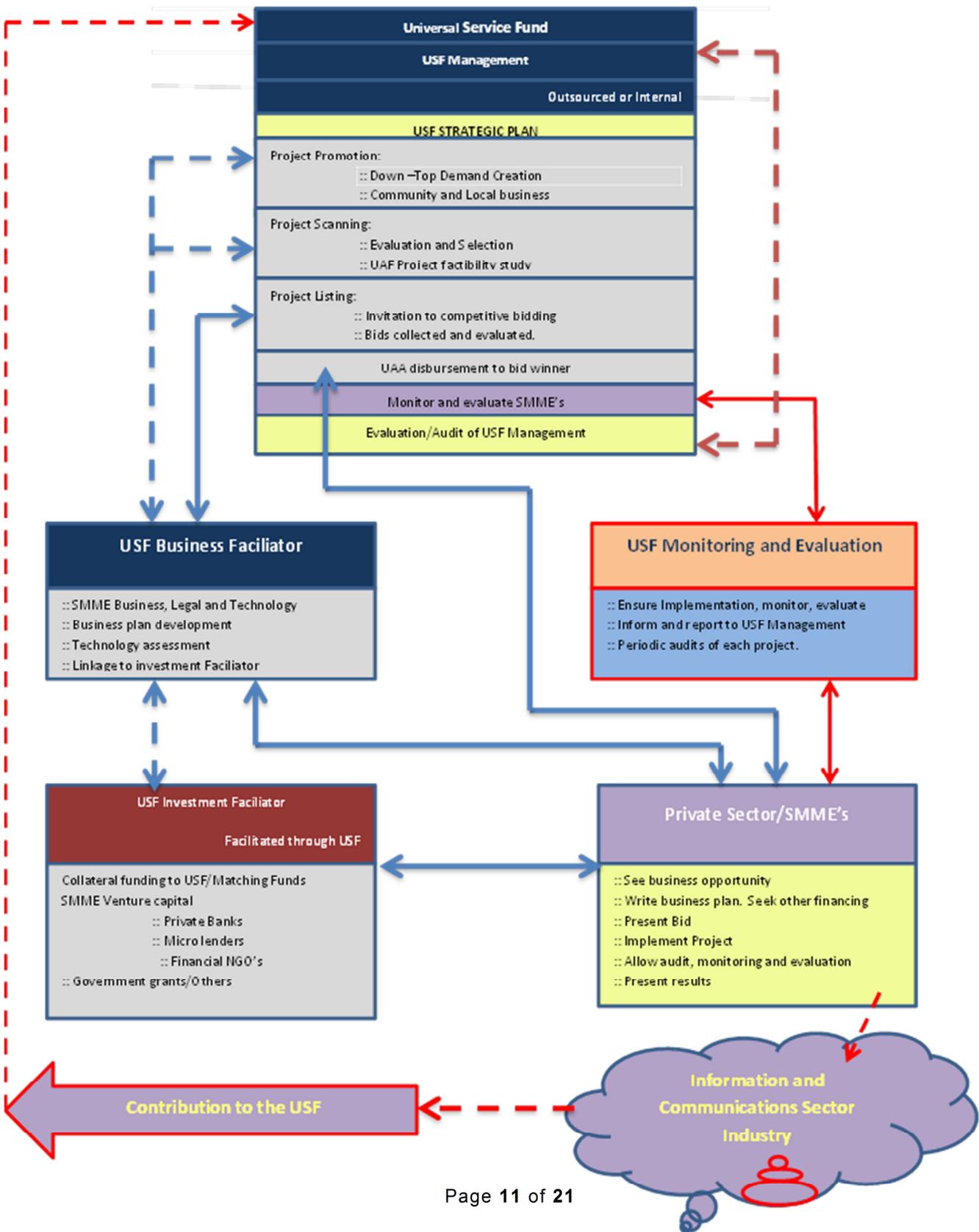
- 2.6.1 One of the most critical factors in implementing US and UA strategies is the ability to access sufficient funding to develop and sustain projects.
- 2.6.2 There are various funding strategies that may be pursued in meeting the investment requirement for such projects. The options could include international grants, funding made available by Government for rural development, contributions from private sector etc. The most popular funding model has been the creation of a Fund as a dedicated resource for identified projects.
- 2.6.3 In jurisdictions that have opted to establish such a Fund contributions to the Fund are in the form of an annual levy which is generally placed on operators in the sector.
- 2.6.4 The effective management of a Fund has been a challenge for many Regulatory Authorities or in certain instances the line Ministry, depending on where the function resides. The key is in developing a successful model with a well-defined process for access to its resources.
- 2.6.5 As an initiative for the organization of COMESA¹², the Association of regulators of Information and Communications for Eastern and Southern Africa, commonly known

¹² Common Market for Eastern and Southern Africa

as “ARICEA”, have developed a policy guideline focussing on Universal service and access, which includes a detailed model of the structure and operation of the Fund.

2.6.6 This model has proved to be successfully adopted in some of these countries, and we propose that USAASA consider this model as a guide in structuring the Fund.

Universal Service Fund Model



“The USF is the main financing instrument for achieving universal access and service, and it should be seen as an investment Fund. Good Governance principles in the management of the USF are the cornerstone of its success. A badly managed USF can bring catastrophic results, whereas a well managed fund can be a source of great advancement and development for the sector and a source of substantial economic activity in this and other sectors of the economy.”

Source: Policy Guidelines on Universal Service/Access, COMESA, dated August 2004

- 2.6.6 In order to optimize the benefit derived from this model, it is essential that the Fund is managed in an effective and co-ordinated way.
- 2.6.7 In the illustration of the model above, the management of the Fund could be outsourced or managed internally. The deviation from the approach suggested in the model, would be that the Fund will be managed by USAASA and the monitoring function will also fall within the ambit of the Agency.
- 2.6.8 The model further illustrated a defined mechanism for creating a competitive bidding process to gain access to the funds. There are additional mechanisms recommended for providing support and tracking the progress of projects, once the bids have been awarded.
- 2.6.9 Neotel proposes that the aforementioned model be used as a guide to develop a concrete operational plan for the USAF.
- 2.6.10 An essential element that has been lacking in relation to the current operation of the Fund, is a strategic plan which includes clear governance principles.
- 2.6.11 More recently, during the month of September 2010, The Authority published a draft regulation in respect of contributions made to the Fund. Neotel responded with a detailed submission, dated the 22 October 2010. The central focus of the proposals was aimed at the structure and management of the Fund.
- 2.6.12 Neotel would like to supplement this submission with the submission dated the 22 October 2010. The comments in the submission would be constructive in providing some direction in relation to the questions raised in the discussion document, especially with reference to the USAF.

2.7 STATUS OF OBLIGATIONS UNDER THE EXISTING FRAMEWORK

- 2.7.1 As stated earlier in the submission the questionnaires that were circulated by BMI-T, were successful in eliciting the challenges and shortcomings of the existing framework.

- 2.7.2 The section of the report containing the “*USAO Compliance Review of Licensees for Icasa*”¹³ provides a crystal clear synopsis of what obligations were issued to the operators and which obligations have been fulfilled and what remains outstanding.
- 2.7.3 Having had regard to the report what appears to be consistent is that network coverage obligation, requiring a percentage of either geographical or population coverage, is a common challenge across all categories of licensees, where such obligation has been imposed.
- 2.7.4 Furthermore, the requirement is crafted in a way that makes it impractical for the Authority to monitor compliance.
- 2.7.5 This gives support to the proposal that coverage obligations are an impractical manner in which to catalyse roll-out.
- 2.7.6 The other conclusion that may be drawn from analysing the reasons for non-compliance, is that the methodology and mechanisms used to determine the nature of the obligation and the allocation process has proved unsuccessful. As a result in most instances the outcome has been non-compliance or inability to discharge the obligation.
- 2.7.7 In the case of Neotel, the Authority had crafted the obligations in the form of connectivity to schools and clinics, when the licence was awarded. These obligations were then transferred into the converted ECNS licence that was issued to Neotel in January 2007.
- 2.7.8 Due to various factors beyond the control of and extraneous to Neotel, which reasons are captured in Table 5, page 10-11 of the “*Compliance Review*”, Neotel has been constrained from discharging this set of obligations.
- 2.7.9 There is also a disparity in terms of where the obligation has been placed, for certain operators it is attached to the service licence and for others in the spectrum licences.
- 2.7.10 What appears to be emanating from the review and the information reported in each of the tables¹⁴ is that each operator has experienced some form of non-compliance with its associated obligations.
- 2.7.11 The obvious conclusion that can be inferred from the statistics presented in the report is that the current framework is ineffective and has to be revisited.

¹³ Pages 1-32, by BMI-T and Mkhabela Huntley Adekeye Inc, dated March 2010

¹⁴ Compliance Review of USAOs for ICASA- pages 5-12

2.8 PREFERRED MODEL UNDER THE NEW FRAMEWORK

2.8.1 The report¹⁵ tabled by the consultants, has recommended seven different models that may be considered under the review of the framework.

2.8.2 Having considered the various models, Neotel would like to propose a hybrid model.

Description of the model would be as follows:

- (i) All licensed operators pay the contribution to the Fund;
- (ii) The Authority no longer imposes USAOs to the licence;
- (iii) All operators that contribute to the Fund may access the Fund through a competitive bidding process, for identified US and UA projects;
- (iv) USAASA manages and administers the Fund, including monitoring progress of projects;
- (v) All existing obligations become obsolete.

2.8.3 This model is the simplest to implement and requires minimal legislative intervention, the only amend required is the removal of the existing obligations from the Licences.

2.8.4 The advantage of this approach is that it will level the playing field in this liberalised environment, given the fact that many of the converted Licences under the ECA, have no USO obligations and it removes the onerous administrative burden from the Authority, in terms of having to develop a framework to determine which licensees should have obligations, where such obligations will reside and how they will be monitored for compliance.

2.8.5 It further enables USAASA to deliver on its mandate and to perform the functions it is required to fulfil in terms of the Act. It was never contemplated that USAASA should engage in roll-out facilities to provide connectivity.

2.8.6 In the event that the Authority elects to retain the power to impose obligations, this should be in relation the allocation of scarce resources, like spectrum, in which case the nature of the obligation must be aligned to recommendation made by USAASA.

¹⁵ Review of Universal Service and Access Obligations-pages 53-55

3. RESPONSES TO THE QUESTIONS RAISED IN THE DISCUSSION DOCUMENT

In terms of the structure of the discussion document, the final section under paragraph 15¹⁶ requires the submission to address key questions that directly impact on review of the existing framework.

Having studied the report, and the discussion document we are of the view, that the chronology of the stages in which this review process unfolds needs revision.

The initial or first phase of the process entails a review of the policy. It is the policy that fundamentally informs the regulatory/legislative process and ultimately the implementation.

We therefore address the questions in the following chronological order:

- 3.1 Policy Issues
- 3.2 Legislative Regulatory Issues
- 3.3 Implementation
- 3.4 General

Neotel has transcribed the questions from the discussion document and has endeavoured to provide responses, intended to guide the process moving forward.

3.1 Policy Issues

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

The inception of adopting any model, commences with a pronouncement on the policy governing US and UA. The model will be informed by the content of the policy.

3.1.1.1 *If so, please provide details.*

¹⁶ Contained Government Gazette No. 33467, published on the 17 August 2010

- 3.1.1.2 If not so, please indicate whether a legislative amendment would be required and identify provisions of the ECA that need to be amended and /or new provisions that need to be introduced.

As indicated above, the policy needs to be in place before any implementation can take place.

- 3.1.2 What should be the focus areas of USAO's in terms of infrastructure and services?

Where policy has provided direction in terms of imposing obligations then the obligation should not be prescriptive in terms of compelling the licensee to provide infrastructure or services. The approach rather should be to conduct a needs assessment of the institution or community that requires connectivity. There may be instances where the requirement is both infrastructure and services. The complexity arises when the obligation is fragmented into infrastructure, service or providing CPE etc.

3.2 Legislative /Regulatory Requirements

- 3.2.1 Must licensees continue to carry USAO's? (In answering these questions you are requested to comment on whether broadcasters must carry such obligations)

We are of the view that this requirement is unnecessary in a liberalised environment, especially if operators are able to access funds to roll-out UA and US initiatives. Refer to the model suggested in paragraph 2.8 "*Preferred model under the new framework*".

- 3.2.2 If so:- N/A

- 3.2.2.1 Which factors/considerations must be taken into account in determining whether a particular licensee or category of licence must carry USAO's or not?

The model proposed by Neotel makes this requirement irrelevant. Under the suggested model no operator has to be compelled to carry the obligation. All operators contribute to the Fund and will be eligible to apply for funding. Initiatives or projects that identified by USAASA, will be subject to a competitive bidding process in the interests of transparency. Any operator may elect to acquire this obligation.

- 3.2.2.2 which licensees (electronic communications network service ("ECNS"), electronic communications service ("ECS") and / or Broadcasting Licensees ("BS") must carry the USAOs, taking into account the answer to 3.2.1)

Refer to 3.2.2.1 above

3.2.2.3 should all licensees or some continue to carry USAO's (ECNS, ECS and BS) or which, if not all, must carry USAOs? Please indicate what the role of licensees no longer carry USAOs) should be towards the goal of achieving US/UA. You are requested to provide reason for yours answers)

All licensees will continue to contribute to the Fund at the prescribed rate, which will be their contribution towards US and UA.

As discussed above no licensee will have USAO's imposed as an obligation, these obligations will be converted into projects that will be subject to tenders.

3.2.2.4 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 the existing obligations, if any.

Not applicable in terms of the proposal outlined above.

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

Under the licence conversion process, all licences were to be converted on the same terms and conditions that prevailed under the Telecommunications Act.

Section 93 of the ECA states the following:

93(1) Subject to subsection (4), the Authority must convert existing licences by granting one or more new licences that comply with this Act on no less favourable terms.

And

93(4)(b) As part of the conversion process, the Authority may grant rights and impose obligations on the licensee, in order to ensure that the existing licenses comply with this Act, including the continuation of any obligations imposed upon existing licensees by virtue of a previous determination. Such obligations remain in force until such time as the Authority completes a review in terms of section 67(8).

Having regard to the aforesaid provisions, it is unclear as to how such a situation would arise.

- 3.2.4 What kind of obligations must be imposed on the licensees that you submit need to carry USAO's? 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 licensees have to carry. You are requested to deal with Broadcasting licensees separately in your answer;

The tables included in the "USAO Compliance Review of licensees for ICASA", more specifically from pages 5-12, provide a detailed analysis of the difficulties experienced by each operator. Clearly the nature of the obligations coupled with the allocation methodology has been unsuccessful. The analysis includes the reasons for failure to comply as well. Based on the outcome of the review we have proposed that this approach be abandoned in favour of the new proposal.

Unfortunately, the report does not provide an analysis of the status of Broadcasting obligations, which makes it difficult to make any assessment in terms of broadcasting.

- 3.2.5.1 If not so what would you submit has to be done to improve the harmonisation of those processes towards the achievement of the goal of USAO's?

The entire process needs to commence from afresh, beginning with a clear policy directive on US and UA.

- 3.2.6 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, where applicable, and new ones which were imposed upon conversion of the licence, where applicable)?

Refer to the response in 3.2.3

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

This approach would be practical; however the recipient of the services may over time want to engage another service provider, and should have the flexibility to do so.

- 3.3.7 Must licensees continue to make a contribution to the USAF?

Yes

- 3.2.7.1 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 the contribution is or would be sufficient?

A key consideration for setting the threshold of the Fund is the performance of the fund. At this stage the USAF has accumulated substantial revenues that have not been effectively disbursed. Also refer to the Neotel submission on the contributions to the USAF dated 22 October 2010. A copy has been attached for ease of reference.

3.2.7.2 If not then from which sources do you think the USAF should be funded?

Given the status of the fund at present there is no need to supplement the fund.

3.2.7.3 If you submit licensees should not continue to carry USAO's, what would you submit the role of the licensees should be towards contribution to the goal of US/UA?

The contribution to the Fund

3.2.7.4 If you submit 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?

Access to the Fund will be on a competitive bidding process, the issue of obligations will be irrelevant.

3.2.8 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.

The BMI-T report pages 91-98 , cover the required definitions.

3.2.9 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 body?

3.3 Implementation

3.3.1 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 USAOs and the process for the co-ordination and actual roll-out of the USAOs.

The content of the BMI-T report is testament to the fact that the current framework is flawed and ineffective. This calls for a complete review of the process.

3.3.2 If so are there any areas that need improvement in the:-

3.3.2.1 determination of the USAOs? Please provide full details

This has been done in an arbitrary fashion without any “needs- analysis” or policy directive. It was not informed by any study or research conducted by USAASA.

3.3.2.2 co-ordination of the USAOs? Please provide full details

There was certainly a lack of co-ordination between the various Departments and their understanding of the nature of the obligations. There was definitely a lack of consultation between the respective Departments.

3.3.2.3 monitoring and evaluation of USAOs? Please provide full details

Although compliance reports have been submitted periodically, there has been no feedback from the Authority.

3.3.3 If not so please identify the shortcomings and/or problems associated with the current system.

Refer to the responses stated above

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

Any licensee who makes a contribution to the Fund should be eligible; this is a fair, equitable and transparent basis to gain access.

3.3.4.1 if yes, state why

3.3.4.2 if no:-

(a) should any other licencees who carry USAOs also be considered?

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

3.4 General

Interested persons are requested to provide any information or any issues not covered above, that they submit are relevant and need to be taken into account for the purposes of this enquiry.

4. CONCLUSION

- 1.1 Neotel wishes to commend the Authority on the consultative and constructive approach adopted by the Authority.
- 1.2 We are fully in support of the approach to revisit the existing framework.
- 1.3 We trust that the comments incorporated in the submission are constructive in developing a new model moving forward.
- 1.4 Neotel proposes that a workshop be convened to enable open discussion on the various models , so that consensus may be reached on the approach under a revised framework.

