

IN EXERCISE of the powers conferred by section 84P of the Kenya Information and Communications Act, 1998, the Minister for Information and Communications, in consultation with the Communications Commission of Kenya, makes the following Regulations:—

THE KENYA INFORMATION AND COMMUNICATIONS (UNIVERSAL ACCESS AND SERVICE) REGULATIONS, 2010

1. Citation.

These Regulations shall be cited as the Kenya Information and Communications (Universal Access and Service) Regulations, 2010.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“Advisory Council” means the Universal Service Advisory Council established under section 102A of the Act;

“Designated population” means individuals, households, groups, communities or institutions determined by the Commission, from time to time to be the target beneficiaries of universal access;

“Fund” means the Universal Service (US) Fund established under section 84 J of the Act;

“Licensee” means any person licensed under the Act;

“Operating plan” means a plan prescribed by the Commission for the implementation of specific universal service programs and projects;

“Subsidies” means assistance granted to support universal service programmes and projects;

“Universal access” means access of one hundred percent by a designated population that can obtain, at the minimum, public access to quality and affordable communication systems and services;

“Universal service” means access of one hundred percent by a designated population that is reasonably able to privately subscribe to and use particular

communication systems and services of a specified quality on an individual, household or institutional basis including, among others, to the provision of—

(a) public voice telephony;

(b) Internet access; or

(c) Other services by which people access efficient, affordable and modern communications systems and services;

“unserved areas” means geographic areas where no designated level of universal access is currently available;

“Universal Service Levy” means a levy charged by the Commission on licensees for purposes of the Universal Service Fund;

“Universal service programs” means the general macro-level universal service initiatives aimed at achieving one or more of the universal service objectives.

“Universal service projects” means the specific micro-level implementation activities related to each Universal Service Program.

3. Purpose and object.

(1) The purpose of these Regulations is to provide a regulatory framework for the design and implementation of universal access and service provision and for the administration of the Universal Service Fund in Kenya.

(2) Without prejudice to the generality of section 84J of the Act, the objectives of the Universal Service Fund shall be to—

(a) Encourage efficient access to and use of communications systems and services throughout the Republic of Kenya, focusing on rural, remote and under-served areas in order to promote social and economic development;

(b) Ensure reasonable availability and affordability of basic and advanced communications systems and services to persons with disabilities, at the household and individual levels, particularly where the market is unable to deliver such services in a financially viable manner;

(c) Support the development of information and communication technologies, including related human capacity and technological innovation;

(d) Provide support for the introduction and expansion of communication services to schools, health facilities and other organizations serving public needs; and

(e) Facilitate development of and access to a wide range of local and relevant content.

4. Amount of the Universal Service Levy.

(1) The Universal Service Levy imposed under section 84J (3) of the Act shall be charged on all licensees offering communications systems and services on a commercial basis.

(2) The levy charged on licensees shall be an amount not exceeding one percent of the gross revenue of a licensee.

5. Purpose of the Universal Service Fund.

The funds from the Fund may be applied in activities that support national communications development programmes including, among others—

(a) Funding universal service programmes and projects;

(b) identifying, approving, scheduling and financing private sector and local community investments in universal service provision projects; and

(c) The conduct of research and other relevant studies in information technologies.

6. Manner of funding.

The Commission may fund universal service programmes and projects through—

(a) Subsidies;

(b) Loans; and

(c) Grants.

7. Identification of projects to fund.

When identifying the projects to be funded by the Universal Service Fund, the Commission—

(a) Shall promote the establishment of efficient, self-sustaining projects, that will expand access to communications systems and services on their own initiative and with minimal funding;

(b) May support projects that are not economically feasible without support of the Fund;

(c) May support projects to the extent necessary to create adequate economic incentives for investors.

8. Management of the Fund.

Pursuant to section 84J of the Act, the Commission shall collect and disburse the funds of the Fund in accordance with the Act and—

(a) Establish administrative mechanisms, systems and structures for proper management of the Universal Service Fund;

(b) Supervise and provide broad policy directions for the management of the Fund and Universal Service Programs;

(c) Develop specific indicators of communications access;

(d) as far as practicable, apply a competitive selection process to select beneficiaries of the Fund;

(e) Develop appropriate socio-economic criteria for identifying the geographical areas, population groups, institutions and organizations that may be eligible to benefit from the Fund;

(f) Develop criteria for evaluating project proposals for funding;

(g) Monitor and evaluate the fund projects; and

(h) Formulate the annual operating plans of the Fund.

9. Universal Service Advisory Council.

The Universal Service Advisory Council shall—

- (a) Advise the Commission and provide strategic policy guidance for the implementation of the Universal Service Fund; and
- (b) Perform any other functions assigned to it by the Board from time to time and as necessary for the implementation of these Regulations.

10. Fund Accounts.

- (1) The Commission shall deposit the funds of the Fund monies in one or more accounts established in one or more reputable banks in Kenya.
- (2) The Commission shall maintain a separate account for the Universal Service Fund and shall keep proper books of accounts and records of the operations of the Fund.
- (3) The accounts of the Fund may at any time and shall at the end of each financial year, be audited by an independent auditor.

11. Annual Report.

- (1) The Commission shall, within three months after the end of the financial year, prepare and submit to the Minister an annual report containing—
 - (a) The audited financial statements of the Fund; and
 - (b) Details of activities supported by the Fund
- (2) The Annual Report shall also be available for public inspection at such times and in such manner as the Commission shall prescribe.

12. Investment of the funds of the Fund.

The Commission may invest or apply the funds of the Fund towards—

- (a) Fixed bank deposits;
- (b) Government securities; or
- (c) Any other investments approved by the Commission and in accordance with applicable financial Regulations.

13. Power to issue guidelines.

The Commission may, from time to time, issue guidelines relating to the management of the fund.

Made on the 10th May, 2010

Samuel Poghio,
Minister for Information and Communications