UNIVERSAL SERVICE FUND (USF)

FRAMEWORK

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INTRODUCTION

The government is committed to ensuring that all the citizens of Kenya have access to modern, high-quality communication services. While the private sector has an important role to play in meeting universal access targets through increased investments, there is a need for government to promote investments in rural and other un-served areas through provision of incentives.

The Kenya Information Communications Amendment Act 2009 (KICA 2009) and the Kenya Information and Communications Regulations 2010 (KICR US&A 2010), established the Universal Service Fund (USF) to complement private sector initiatives towards meeting universal access objectives.

The Fund is primarily financed by mandatory contributions from licensed operators which provide services in the various communications market segments, with provisions for complementary financing from other sources.

The Communications Authority of Kenya is mandated to manage and administer the Universal Service Fund. In discharging this mandate, the Authority has prepared this USF framework, to inform the public and all stakeholders about the key aspects, considerations and principles that the Authority shall uphold in administering the Fund.

OBJECTIVES OF THE FUND

The objectives of the Universal Service Fund as provided in the Kenya Information and Communications Regulations 2010, Universal Access and Service include:

a) Promote communications infrastructure and services rollout in rural, remote and under-served areas

b) Ensure availability of communication services to Persons with Disabilities, women and other vulnerable groups.

c) Support the development of capacity building in ICTs and technological innovation;

d) Support 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.

FUND GOVERNANCE AND MANAGEMENT

Governance

The Fund shall be governed by the Communications Authority of Kenya (CA) with oversight of the Universal Service Advisory Council, appointed by the Government.

As per Section 84J (3) of KICR 2010, a Universal Service Levy (not exceeding one per cent of gross revenue) shall be charged on all Licensees offering communications systems and services on a commercial basis including Telecommunication Network and Service Provider Licensees, Postal & Courier Licensees and Broadcasting Licensees.

Other sources of funding may include:

- Government appropriations
- Income from investments by CA
- Gifts, Donations, Grants and Endowments

The specific functions of the Commission, as relate to the USF, include collection of the funds as provided by the KICA 2009, and disbursement of these funds within the USF framework, through the Universal Service Obligations and Funding (USO&F) Division.

Fund Disbursement

The Authority shall ensure that utilization of the Fund is transparent to the public, and subject to independent audit. The award of disbursements shall be conducted through a transparent, non-discriminatory, and competitive process. It is the Commission's intention to disburse funds in the form of non-reimbursable grants, for purposes of underwriting the capital and operating costs of projects to be implemented by Fund recipients, according to the framework described herein.

Management of the Fund

The Kenya Information and Communications (Universal Access and Service) Regulations, 2010, lay down the guidelines according to which the USF Accounts shall be prepared and maintained. The Authority shall have custody of the account books, cheque books, securities, investment instruments and other documents and papers pertaining to the Fund and the Fund Account. The books of accounts of the Fund shall be always open for inspection by the members of the Universal Service Advisory Council and the Licensees.

The USF accounts shall be audited once a year by accredited professional auditors appointed by the Commission, through an open and transparent process. In addition, consistent with the statutory audit requirements, a Government audit shall also be undertaken.

In the course of managing the Fund, the Authority may make and liquidate investments of surplus sums. The amounts from the Fund shall be invested only in Government risk-free financial securities or schemes. Any interest/profits shall be credited to the USF account.

SCOPE OF THE USF

General

The USF will devote its resources toward achieving the objectives set out for the Fund, as identified above. CA will define several broad USF Programs, associated with these objectives, and will implement specific USF Projects under each program, during each Fund operating year. In all cases, industry and public stakeholders will be consulted in the development of the goals, scope, and details of program frameworks and project design.

The Fund will seek to balance its activities and financing among these different initiatives, within the limitations of available budget and capacity. For each year's operating plan, CA and the USAC will determine, based upon consultations and market assessment, the appropriate allocation of funding for each program. Projects will be designed to fit these budget levels, with priority locations determined according to agreed, transparent criteria.

USF Programs

The following represent the tentative USF Programs that the USF administration intends to implement. Brief summary descriptions of the intended goals and outputs of each program are provided. These will be refined and expanded following stakeholder consultations.

Mobile Telephone Network Expansion

Projects under this program will target coverage gaps in mobile networks, where operators are unable or unwilling to extend service on their own. The Fund will work with operators to identify the boundaries of these gaps, and to determine the scope of infrastructure investment and other related costs that may require support from the USF to ensure full coverage. Priority projects will be those that reach the largest un-served populations in remote areas of the country.

Community Broadband Networks

The focus of this program will be to bring broadband connectivity into towns and villages where broadband is currently unavailable. The main requirements will be to establish broadband connections at major public institutions within each designated location. These include:

- Schools
- Health facilities
- Government offices
- Post offices
- Libraries
- Other community service locations

Contracting operators that implement these projects will be responsible for constructing and operating the local broadband networks and services in the designated areas, providing end-user service to each institutional customer, according to agreed terms and conditions. The Fund will also support service subscription/usage costs for such institutions for an interim period. The operators will also be allowed and encouraged to offer commercial broadband services to other customers (homes and businesses) in each area.

Projects may also include a requirement to establish a public access ICT facility (community ICT centre) in each designated location, potentially linked to a

local post office or school. Management of such facilities would not be the direct responsibility of the operator, however.

ICT Content and Applications

Under this program, the USF will collaborate with other organizations and projects that focus on supporting development of content and applications of value to rural and underserved communities. These may include web sites, mobile apps, educational and training materials, interactive and multimedia applications for special needs users, and other targeted ICT content. The Fund will look to co-finance development projects that serve priority needs, and also those that may become self-sustaining and commercially viable.

ICT Capacity Building and Awareness

The USF will support expanded capacity and awareness building, particularly in connection with other Fund projects. The Fund administration intends to establish ongoing relationships with qualified ICT training organizations, including private sector and university-based groups, to deliver customized public capacity building projects in communities where broadband networks and services are introduced for the first time. Projects may include hands-on training classes, public awareness raising events, assistance to local entrepreneurs, and both user and management training at public institutions. The goal will always be to ensure that new users in these communities have the best opportunity to benefit from the technologies as they become available.

Special USF Projects

The Fund may also undertake certain Special Projects that merit financing through the USF, and are consistent with the Fund's priority objectives. For each Special Project, the Fund administration will solicit ideas, inputs, and requests from a range of stakeholders, and will prepare a tentative project plan for public comment. All details of the proposed project(s) will be open for scrutiny, including locations, services, beneficiaries, standards, and other terms and conditions.

Every effort shall be made to put special projects to competitive auction, however if such an auction is not possible because of the nature of the special project, then this decision will also be subject to public input and comment. This may be the case, for example, where the Fund agrees to cooperate

strategically with a particular public agency or department, such as the Post Office or Ministry of Education.

The Fund administration may set a maximum limit on the amount of Fund resources that can be assigned to Special Projects during any given year.

Services and Facilities to be supplied

Each USF Program and USF Project will consist of clearly defined requirements for contractors to supply under the terms of the funding agreement. Contracting service providers shall be obligated to deliver the mandatory infrastructure, facilities, and/or services according to specific terms and conditions, including a clear timetable. Among the types of outputs that USF contractors may be required to provide are:

- Supply, installation, and operation of fiber optic cable, or equivalent transmission infrastructure, for backhaul network and last-mile connections.
- Construction and maintenance of wireless transmission masts and antennae, along with related support structures and equipment.
- Installation and operation of switching and routing equipment, software, and supporting facilities, typically expanding existing core equipment.
- Provision of end-user customer services and support, equivalent to that provided to all commercial customers.
- Establishment of public access facilities, including computer equipment, software platforms, servers, ancillary devices, and related structures and furnishings.
- Relevant end-user applications, information content, programming and development support, web hosting, etc.

Contractors will be expected to deliver these and other outputs either via their own networks and systems, and/or through subcontracts and relationships with other appropriate suppliers, to the full satisfaction of all USF contract requirements.

GUIDING PRINCIPLES OF USF OPERATIONS

General

CA and the USAC shall operate the USF under clear and public rules of procedure, and according to a set of firm principles. The following items describe some of these core principles that will guide implementation of the USF.

Transparent Processes

All activities of the USF shall be conducted in an open, transparent manner, in close consultation with private and public sector stakeholders. In developing program goals and project design, CA shall consult directly with affected parties, including potential service providers, end user communities, and other organizations that may participate in the projects. The Fund's accounts, including collections and spending, shall be publicly available on the CA website, along with the results of all procurements, and criteria for all decisions. All USF rules and procedures shall also be open for public inspection and input.

Open, Competitive Procurements

CA shall award USF project contracts only through open, competitive procurement procedures. All eligible providers will be allowed to bid for these contracts, following standard public rules. To ensure transparency, all bidding documents will be made publicly available, along with other key information about the bidding processes and the projects to be awarded. At the conclusion of every bidding, a summary of the bid evaluation, containing entire bidding process, its history, bid prices and the bidding result shall be publicized, including by being posted on the USF website. As projects are implemented, progress and monitoring reports will also be regularly updated on the Fund website.

No Distortion of the Market

CA will always seek to ensure that the activities of the Fund do not distort or interfere with private sector market competition. The Fund will not be used to subsidize markets or services that can be served commercially without USF

support. All market players will have fair and equal opportunities to compete for Fund resources, subject to additional criteria below.

Infrastructure Sharing

All service providers that receive USF funds shall be required to allow open, cost-based sharing of infrastructure on facilities built under USF contracts to other licensed operators. Such sharing may include access to masts, cables, dark fiber, physical structures, ducts, equipment enclosures, and similar facilities. Terms, conditions, and restrictions on such shared access will be developed by CA as part of the USF project implementation rules, to be developed in consultation with industry providers to ensure fairness and technically reasonable requirements.

Uniform Criteria for Selection of Areas

CA shall develop clear and objective methods and criteria for prioritizing geographic zones where USF projects will be implemented. In general, priority will be given to rural, remote, and small towns and villages which are un-served or under-served by telecommunications networks and ICT services, and where commercial operators do not intend to provide service on their own. The factors that will determine which specific areas will be chosen for any given projects will be determined on a transparent and fair basis, including consultations with local stakeholders, taking account of such criteria as access and proximity to existing network infrastructure, size of population and density, status of supporting infrastructure (energy, roads, etc.), socio-economic conditions, and geographic and demographic diversity.

Technology Neutrality

In awarding USF projects, the Authority shall not expressly promote or disallow any particular technology platform, system, or architecture that can be demonstrated to achieve the required results. Bidders for USF contracts shall be allowed to propose any suitable current or new technology or design to fulfill project requirements, without penalty, as long as the chosen solution has a proven record of service in the field, anywhere in the world. Bidders will be encouraged to propose the most cost effective mix of technologies using any innovative and forward-looking solutions.

Limitations on Subsidies to a Single Licensee

The Authority shall endeavor to ensure that all Licensees contributing to the Fund have a fair and equal opportunity to receive subsidy funding under competitive project bids. In particular, the Authority will consider establishing maximum limits on the total number of projects or amount of payments from the Fund that any one licensee can receive during a given time period. The precise terms of such limits will be determined through a consultative rulemaking process.

Frequency Spectrum

The Authority shall avail the required spectrum for last mile connectivity on a case to case basis for specific projects.

Public Awareness

The Authority shall widely disseminate the purpose and objectives of the Fund through the media as well as by arranging public events, especially at places where USF Projects are being planned or implemented.

PROJECT PLANNING AND IMPLEMENTATION

Project Development Criteria

The Authority will develop the scope, location, and details of specific projects to be implemented under the various Fund programs, in consultation with industry and local stakeholders. The Fund will not finance projects in locations that can be commercially served by competitive market players on their own. CA will regularly review the status of market development and plans, and the scope and nature of gaps in network and service access, as an input to the project planning process. CA shall also develop neutral and transparent criteria for selecting which eligible locations may receive priority attention for USF supported projects.

Project Plans

The Authority shall prepare a project plan for each project, in consultation with potential beneficiaries and industry. Each plan shall include a clear description,

applicable service requirements, specifications and standards, service implementation timetable and any special commercial terms that would have an impact on the feasibility or business planning for the implementing contractor. Where the project is to be auctioned with a reserve price, the project plan shall also identify the maximum subsidy amount.

Eligibility Criteria for Fund Applicants

In the competitive bidding for projects requiring provision of infrastructure, connectivity and service, only duly licensed operators shall be eligible to participate.

A Licensee shall be disqualified from taking part in an tender if it:

a) defaults in payment of its USF contribution;

b) has failed to complete previously granted contracts

Other specific eligibility and qualification criteria will apply to each project, to ensure that only well qualified participants may compete for USF financed projects.

Public sector entities and other non-licensees shall be eligible to bid for special projects relating to ICT services and applications, if such systems or services do not require a license from CA.

Competitive Bidding / Reverse Auction Framework

The existing Public Procurement Legislation shall govern the competitive bidding process for USF project contracts.

The Authority shall prepare a Bidders' Information Package which will be provided to all interested eligible bidders. The Package shall include detailed information about the project, instructions to potential bidders on how to participate, eligibility requirements, format of bid submissions, and amount of bid bond, any applicable reserve price and any other requirement of the bid.

The Authority shall conduct technology-neutral evaluations of bidders' technical submissions to ensure the proposed solutions will comply with project requirements, but will not otherwise prescribe specific architecture, platforms, or service delivery mechanisms. In all USF competitive procurements, only the

technically qualified bidder requiring the LOWEST subsidy shall be awarded USF project contracts.

If any collusion among bidders is suspected, the Authority shall have the right to cancel the bid and subsequently re-bid. If no bid is received, the Authority shall discuss with the Licensees the reasons and review the bidding process and constraints accordingly.

Monitoring and Evaluation

The Authority shall implement a robust Monitoring and Evaluation framework to oversee all USF financed projects. This shall include regular onsite and offsite monitoring of all projects to make sure that the funding is being utilized in accordance with the contracts.

In addition, the Authority will undertake impact evaluation studies to assess the performance of USF projects, and whether the USF programs in general are meeting their objectives. Further, the evaluations will be used to assess the effectiveness and impact of USF programs towards the achievement of the universal access goals in Kenya.

ANNEX 2: REPORT ON ANALYSISOF STAKEHOLDERS FEEDBACK ON THE UNIVERSAL SERVICE FUND (USF) FRAMEWORK

1.   INTRODUCTION

The Authority on the 25[th]June 2013 through a Consultative Paper on the Universal Service Fund (USF) Framework posted on its website [www.CA](http://www.CA.go.ke) [.go.ke](http://www.CA.go.ke) invited the public and stakeholders to review and give comments on the proposed USF framework by the 5th July 2013. The Public and industry stakeholders were expected to submit their comments on the proposed key aspects, considerations and guiding principles as well as to any fundamental issues that would further enrich the framework.

The electronic and written submissions were received from the following organizations / firms;

(a) Safaricom Limited
(b) Airtel Kenya
(c) Postal Corporation of Kenya
(d) Essar Telecom Kenya (**yu**)
(e) Telkom Kenya limited

(f) Fargo Courier
(g) Courier Industry Association of Kenya
(h) Jamii Telecom
(i) DHL Worldwide Express (K) Ltd

2.   METHODOLOGY OF ANALYSIS

Content analysis was used to analyze the stakeholder's contributions. The method entailed going through the submissions and grouping the comments into relevant areas of the USF Framework and based on key issues in the document. Subsequently, 9 key thematic areas were identified as follows:

a) Objectives of the Fund
b) Governance – USAC
c) Governance- Accountability and Management of the Fund
d) USF Levy and Licensees Contribution to the Fund
e) USF Programs
f) Guiding Principles of the Fund
g) Operating Procedures
h) Enabling Policy and Regulatory interventions

i) Access Gaps Study

3.   ANALYSIS OF STAKEHOLDER FEEDBACK

Overall, stakeholders welcomed the collaborative and consultative approach in the development of the USF Framework. There is a general recognition of the statutory mandate of the Authority to implement the Universal Service Fund (USF) and its significance in facilitating ICT access in Kenya.

While the stakeholders are supportive of the USF framework, they listed a numbers of comments that are aimed at improving the clarity and usability of the proposed framework. The stakeholder's responses on key thematic areas are highlighted in the subsequent sections, while the summary of the submissions made by respective institutions are presented in Annex 1.

3.1 Objectives of the Fund

The stakeholders noted that the USF framework has retained the purpose and objectives of the Fund as specified in the Kenya Information and Communications Regulations of 2010. However, most stakeholders felt that the objectives of the Fund in their current form are too general and need to be expressed in specific, measurable, attainable, relevant and time bound (SMART) manner. In addition, the stakeholders expressed the need to be engaged in the development of the USF objectives and targets including key milestones to be attained. The Authority on its part notes that the USF framework is a high level outline of fundamental aspects of the fund. Details of specific projects which shall be based on the SMART model will be defined in the USF's strategic plan that shall also be shared with stakeholders.

Recommendation was made to include aspects of the national broadband strategy to the USF objectives.   In response to this the Authority noted that the NBS is a much broader national roadmap that denotes the USF among its strategies.

There are concerns raised over participation of postal and courier service providers in the USF. The Authority notes that this is a policy as well as legislative matter that is beyond the USF framework. However, the issue was

extensively deliberated upon including during the USF consultation of 2009 and the Authority has maintained the view that postal and courier services are critical communication services that are essential in facilitating a robust broadband/digital based economy.

3.2 Governance - USAC

Stakeholders noted that the legislative framework fails to clearly outline the roles and responsibilities of the USAC including the selection criteria and removal. They recommended that appointment of USAC members be undertaken through a competitive process that is independent from government and political influence and reiterated the need to be incorporated into the USAC. While stakeholders laud a consultative approach they recognize that it does not oblige the CA and USAC to implement projects as proposed by the industry and public stakeholders therefore the need to include industry in the fund's governing body.

The Authority has been impressed upon to ensure that a governance manual is developed to address related issues including general constitution, role and functions of USAC, CA board, Executives and staff, the management of finances and reporting requirements.

In response to this the Authority notes that the issues related to the USAC composition are legislative and therefore not within the purview of the USF framework which aligns itself to the existing legislative framework. However, the Authority shall provide a governance framework that shall define its management, board and staff relationship with the USAC amongst other relevant provisions.

With regard to concerns that industry inputs may not influence the project planning, the Authority notes that the Act and Regulations provide specific objectives of the fund that shall guide it and the USAC in designing and implementing projects in addition to adopting a consultative approach in order to encourage stakeholder participation.

3.3 Governance - Accountability and Management of the Fund

Stakeholders noted the need for an independent and separate bank account, operating budget, and associated accounting procedures for the fund. For accountability purposes, quarterly and annual reports should be provided in

respect to amounts spent, past and projected fund activities, levies collected and disbursements and other key issues affecting the performance of the fund. In addition, there is a view for independent audits and dissemination of reports through daily newspapers and websites.

Given the necessity of transparency in management of the fund, there is recommendation for an autonomous structure within the Authority to manage the fund in order to safeguard against future conflicts. The Authority noted that as stated in the framework, it shall maintain and operate a separate accounting framework for the fund in addition to annual audits by independent auditors selected through a competitive process.

Stakeholders also suggested criteria to determine subsidy and further that it should be a one off payment. It's the view of the Authority that the Subsidy amounts shall be determined on a case to case basis largely driven by the principle of least subsidy requirement by bidders.

Regarding the call for clarity on the eligibility criteria for beneficiaries to the fund, the Authority noted that the framework has provided a general outline that will be further refined in the operational procedures consistent to provisions in the Act and Regulations.

3.4 USF Levy and Licensees Contribution to the Fund

Stakeholders commented that the fund should not run in perpetuity and instead have a defined time period as well as have a mechanism for periodic reduction based on progressive development and subsequent closing of gaps. The Authority notes the dynamic and evolutionary nature of ICT services and the associated challenge of accurately predicting accessibility of 'basic services" as this is redefined over time in tandem to technological changes and development needs.

On the comment that contribution levy that is set at 0.5% of a licensee's annual gross revenue be reviewed to reflect fund requirements in relation to its objectives, the Authority notes that the Access Gap study undertaken in 2009 estimated funding requirements totaling Ksh.74 Billion which based upon a 0.5% contribution would take up to 10 years and 47 years to close the voice and data Gaps respectively. Therefore the appropriate measure would be to in fact increase the levy in order to hasten the achievement of the overall objectives of the fund.

The Authority notes the validity of the comment regarding provision of loans through the USF and wishes to register that this issue has been revised in the current Communications Bill.

Stakeholders also proposed that the USF contribution be based upon a maximum limit or cap for purposes of equity. On the contrary another stakeholder view is that the fee should not be a standard rate but rather be based upon company size. The Authority notes that the framework is based upon the existing legal and regulatory provisions.

3.5 USF Programs

Stakeholders noted that the USF programs should be very specific and measurable with clarity provided around the form, process and timelines of stakeholder consultations. Further, that a separate manual be developed to guide implementation before operationalizing the fund activities. Regarding this the Authority has developed a draft operating manual for the fund and which it shall share with stakeholder in due course.

An additional comment was made regarding the need to fully operationalize NOFBI along with establishing a fair pricing and access mechanism as it provides a great opportunity to support roll out of services to rural areas. The Authority notes that efforts by the Ministry to streamline the operations of NOFBI are expected to address the concerns.

Stakeholders representing the courier and postal operators noted that the programs spelt out in the USF framework appear to have no relevance to their operations. In response the Authority wishes to point out that project related to this sub-sector fall within the special Programs category.

3.6 Guiding Principles, Projects Planning and Implementation

Stakeholder seemed to be receptive to the principles of the USF framework but called for detailed procedures related to them including an operations procedures manual, guidelines on participation by operators, procurement, fund disbursement amongst others. These are represented in the Commission's operating manual which shall soon be shared with stakeholders.

Stakeholders impressed upon the Authority to ensure a robust and well organized project design to ensure that collision by operators and award of

projects to incompetent firms are eliminated. In addition the Authority is urged to undertake pilot projects to test and enhance the auction process. In reaction to this the Authority assures stakeholders that it shall endeavor to safeguard the fund against potential abuse by bidders/operators. It shall also undertake pilot project with support from the Global Broadband and Innovation Program of the USAID in order to gather lessons that shall enhance the effectiveness of the USF framework, guidelines and procedures. Industry consultation during project planning is expected to further enrich the process.

With regard to the view that the Authority should desist from interfering with the market and negating the principles of Competition through the USF, it is to be noted that the fund's objective is to compliment private sector investments in high cost areas that are generally not considered economically viable by the industry.

Stakeholders expressed the need for a more detailed guideline on the criteria for disqualification from the fund and involvement of non-licensees in the bidding process. This view is noted and will be acted upon in subsequent documentations.

However with regard to the call to avoid the public procurement process due to perceived bureaucracy and the long time, the Authority has no latitude over this as it is expected to observe relevant statutory and legal obligations in conducting its affairs.

In response to the call for long term planning and timely information to service providers for purposes of financial planning, the Authority reiterates that it shall undertake the fund activities in active collaboration with the industry. Project planning and design will take into account stakeholder views.

3.7 ICT Access Gaps Study
Stakeholders expressed the need to conduct periodic gap analysis and urged that this information be shared with all stakeholders. In addition there was a view that the fund projects should commence once a fresh gap analysis has been undertaken.

The Authority undertook the study in 2010, to provide a baseline for the access gaps. The gap status has continuously been updated based on information

provided through operator returns. In addition, the Authority in collaboration with the Kenya National Bureau of Statistics is working towards institutionalizing the ICT Access Study in order to ensure that it is undertaken periodically, possibly within every two to three years.

Further, in undertaking USF projects, the Authority shall ensure that extensive research is undertaken to confirm availability of services in target areas in addition to stakeholder consultation during the planning phase to ascertain operator presence and expansion plans.

3.8 Enabling Regulatory Framework

Stakeholder noted the need to ensure supportive regulatory provisions are encouraged including sharing of resources such as fiber optic cables, telecoms masts and power generators so as to drive down the cost of expansion of services. The Authority has commenced the process of establishing and enforcing Infrastructure sharing guidelines.

ANALYSIS OF FEEDBACK RECEIVED FROM STAKEHOLDERS ON THE USF FRAMEWORK CONSULTATIVE PAPER

Name of Stakeholder	Theme 1: Objectives of the Fund	Commission's Analysis, comments and Recommendations
Telkom Kenya	The objectives should be refined to bring out clearly and from the onset services that the fund seeks to establish, why, where and what needs ought to be addressed. Moreover, they should be specific, clear and measurable. The document should be enhanced further to address matters regarding sustainability of the projects to be funded by USF. USF funds should be strictly used in the development of ICT.	• The USF framework is a high level outline on fundamental aspects of the fund and does not therefore spell out detailed project details. However the Authority notes the useful comments related to setting the fund objectives and assures stakeholders of its commitment to uphold best practice in it program/ project planning, implementation and reporting.
Safaricom Ltd	In addition to providing the general objectives the Authority ought to express them as specific, measurable, attainable, relevant and time-bound (SMART objectives).They should be prepared in consultation with industry and stakeholders. The USF Programs ought to be set out as specific and measurable as stated in section 2 of this memorandum. Moreover, clarification ought to be done on the form, process and timelines of stakeholder consultations with regard to refining and expansion of USF programs. This should be included in a separate manual set in place prior to implementation of USF.	• Implementation of the USF is denoted as a strategy within the National Broadband Strategy. • The Act and Regulations define all licensees operating on a commercial basis as contributors to the fund. Further, it's the Commission's view that postal and courier services are critical communication services that support and facilitate a robust broadband/digital based economy. Subsequently the framework recognizes Postal projects within the special programs category.
Airtel Kenya	Prior to implementation of USF it's important to set out clear objectives that are achievable. They should be specific, well defined in terms of services to be provided, standard and level of penetration expected.	
Essar (Yu)	There is need for clarity on the roles of USAC.	
JTL	The objectives of the fund must be clearly measurable indicating service coverage and service delivery targets. It must articulate measurement parameters that will allow milestones and achievements. Additionally they must be subject to annual review and adjustment in consultation with industry stakeholders.	
Hatari Securities	The establishment of Universal Service Fund is a good idea that will enable improvement of information technology in rural areas and these will boost the economic growth in country and create jobs in the rural areas.	
CIAK	The Courier Industry of Kenya reintegrates that the main objective of USF is to expand the accessibility of the ICT Sector. This is clearly indicated within the objective section of the framework. Notably, the framework assumes ICT includes courier operators which is inaccurate.	
Fargo Couriers DHL	As stakeholders we do not have a clear understanding of how the fund intends to assist on our nationwide operations. The scope of USF and the specified programs (as defined in clause 4) have no relevance to the operations of DHL. It is important to offer clarification on what basis the framework requires DHL to contribute to the development of industries it does not operate in.	

Hatari Securities	The establishment of Universal Service Fund is a good idea that will enable improvement of information technology in rural areas and these will boost the economic growth in country and create jobs in the rural areas.	

Theme 2: Governance - USAC		**Commission's Comments / Recommendations**
Telkom Kenya	Provision for consultation does not oblige the CA and USAC to implement projects as proposed by the industry and public stakeholders. Thus, there is pressing need to include stakeholders in the fund's governing body.	• The framework responds to issues related to USAC as defined in the legislative framework. Therefore concerns related to its composition, appointment of members and mandate are best addressed by the Ministry of ICT. • The Authority shall define a clear relationship between the Board, USAC, Management and staff premised on the legislative framework and shall provide this information to stakeholders. • Roles of the USAC are well articulated in the Kenya Information and Communication Regulations 2010.
Safaricom Ltd	The legislative framework does not clearly outline the roles and responsibilities of USAC. Apart from the foregoing, the governance structure for establishment of USF has not been clearly stated in law. The NSSF may be used as a national benchmark for USF. KICA regulations do not provide for other critical roles that are necessary for a transparent USF governance framework.	
Airtel Kenya	The recruitment of Universal Access Advisory Council members ought to be very competitive so that it is independent from government and political influence. On a similar note, a governance manual should be developed so as to address such issues as the general constitution, role and functions of USAC, CA board, Executives and staff, the management of finances and reporting requirements.	
Wananchi Group	USF should be managed through a public-private sector partnership	
JTL	As regards the USAC, it is important to legislate matters regarding the appointment of USAC members, selection criteria, removal and mandate. The council must include representatives of different groups from industry.	

Theme 3: Governance - Accountability and Management of the Fund		**Commission's Comments / Recommendations**
Safaricom Ltd	USF should be completely separated from the operations of the Authority by ensuring it has its own independent bank accounts, operating budget, and associated accounting procedures. The USF framework must provide for reporting that includes annual report that account for monies spent, past and projected fund activities, levies collected and disbursements and other key issues affecting the performance of the fund. Lastly, recipients of the fund must provide audited reports on their progress and performance so as to ensure accountability and transparency	• As defined in the USF framework, the Authority shall operate separate bank accounts and operating procedures for the USF in addition to upholding best practice in fund management. • A comprehensive operational manual that provides greater detail on the fund's operating procedures is being finalized and

Telkom Kenya	The framework should clearly outline the methodology/criteria that will be implemented to ensure transparency in disbursement of funds. On the same note, there is need for clarity on how the Authority intends to ensure accountability or success of projects on the part of fund beneficiaries. The monies collected from the fund investments should be utilized to ensure that the fund is self-sustaining hence there will be no need to perpetually continue collecting money from operators	will soon be shared with stakeholders. It shall address the issues that have been highlighted here. • The USF framework has outlined eligibility criteria for the fund.
Airtel Kenya	The fund should have its own associated accounting procedures, operating budgets as well as accounting for project related costs. The necessary financial controls should be put in place to ensure accountability. For accountability purposes, quarterly and annual reports should be provided to the relevant stakeholders. Similarly, the funds and accounts should be independently audited on annual basis and the results made public through daily newspapers and websites. There should be efficiency and transparency to enable the speedy disbursement of funds and to enable the USF targets to be met within a short period of time. Moreover, there should be criteria for determining the amount of subsidy that is necessary for each project. In order to achieve SMART subsidies, they should be one off, encourage cost saving and market growth, encourage service provision in severely underserved areas, and link subsidies to optimal results.	
JTL	An effective and successful USF should have the ability to easily adjust levies in order to accommodate actual funding requirements. There is need for clarity on who is eligible for the fund. Furthermore, it is important to establish in regulation the eligibility criteria of applicants to avoid abuse and ensure certainty. Given the necessity of transparency in management of the fund, an autonomous structure ought to be put in place to avoid future conflicts.	

Theme 4: USF Levy and Licensees Contribution to the Fund		**Commission's Analysis and comments**
Safaricom Ltd	The USF Framework ought to clearly set out operator's contribution to the USF and provide a mechanism for periodic reduction of this contribution as USF objectives are met. To ensure equity, a maximum limit or cap ought to be set for a single operator's contribution for USF. Operator's contribution to USF ought to be time-bound in line with projected achievement of USF objectives.	• The framework responds to the existing legal and regulatory frameworks which has stipulated the levy amount and defined the contribution criteria.
Telkom Kenya	The USF framework has failed to address the issue of contribution as relates to operators. In 2011, the contribution levy was set at 0.5% of a licensee's annual gross revenue. The amount is not informed by any formula or criteria. It is also necessary to relook at the application of the percentage on the gross revenue. Lastly, there should be a set duration for the collection of the levy since this can't be run in perpetuity because at some point the gaps will be bridged and the proposed investment of the fund would yield income hence there will be no need for continued collection by the fund.	• However, the Authority notes the dynamic and evolutionary nature of ICT services and the associated challenge of accurately predicting accessibility of 'basic services" as this is redefined over time in tandem to technological changes and development needs.
Airtel Kenya	There is need for certainty on the level of contribution as well as the period during which the amount will be levied. The fund should be structured in a way such that at some point it will become self-sustaining so that the players either completely stop remitting any contribution or contribute less toward the fund. It is also important to note that the requirements of the fund will change as universal access targets are adjusted. Thus, retaining the levy for a long period without review may result in collections that do not meet policy objectives or market realities.	• The Access Gap study undertaken in 2009 estimated funding requirements totaling Ksh.74 Billion which based upon a 0.5% contribution would take up to 10 years and 47 years to close the voice and data Gaps respectively. Therefore the appropriate measure would be to in fact increase the levy in order to hasten

Wananchi Group	Why is CA going to levy operators money and then loan the same back to them at interest as per section 84L of the Act? the fees should be based on the size of the company- rates should be applied proportionately, not same rate across the companies regardless of the size	the achievement of the overall objectives of the fund.
DHL	There are significant concerns on the levy being applied on gross revenue given the revenue of operators substantially comprises of services that do not fall within the scope of USF. Clause 3.1 should be amended such that the levy is calculated only based on licensed services.	• Concern over disbursement of loans by the USF is expected to be addressed in the revised Communications Act.
Theme 5: Guiding Principles of the Fund		**Commission's Analysis and comments**
Telkom Kenya	The principles of USF as outlined in the proposed framework are sound	• The guiding principles will be enhanced and elaborated upon in the Fund's Operating Procedures Manual that is under development and soon to be shared with stakeholders. The operating manual shall define in a detailed manner project and auction design including subsidy related issues.
Safaricom Ltd	For purposes of certainty, it is necessary to document the details of the guiding principles in a separate document-Manual of Operating procedures.An independent procurement process, independent from public procurement legislation, with respect to USF also needs to be set in place in the Manual of Operating Procedures.	
Essar (yu)	The rules and guidelines intended to guide participation of licensees and ensure fair and equal opportunity for all should be developed and shared beforehand. The rules should also be incorporated into this framework in form of an annex/schedule.	• The Authority shall undertake pilot projects with support from the Global Broadband and Innovation Program of the USAID in order to gather lessons that shall enhance the effectiveness of the USF framework, guidelines and procedures.
Airtel Kenya	Taking into account that the public procurement process is too lengthy and might lead to delay of implementation of USF projects, it would be recommendable to use it as a guide. The Authority should develop further guidelines which will stipulate the various issues in regards to the entire management of the fund. These guidelines will serve as reference in issues such as reverse auction, investments of the fund, disbursement of the fund, subsidy criteria and cost model to be adopted. The goals of reverse auction must be clear and well defined. Moreover, the opportunities to collude signal or game the process should be minimized and if possible eliminated through auction design. Lastly, pilot auctions should be considered in order to refine the auction process.	• The Authority is a public entity that is obliged to comply to statutory requirements including compliance to the public procurement process.

• The purpose of the procurement process and related evaluation mechanisms is to ensure that only qualified and competent firms are awarded USF projects. |
| Wananchi Group | To avoid unfair distribution of projects, operators limited by experience, expertise and technology need to be thoroughly vetted. The basic notion here is inexperienced operators win the contracts and in turn seek for assistance from those capable of doing the work. Chances of projects not taking off as a result of disagreements between the subcontracted parties will be very high. Thus, there is need for a council made up of telecoms operator representatives and the government to oversee the fund and ensure equitable allocation of the funds to operators. Generally, CA ought not to interfere with market forces; eventually competition will prevail upon the operators, forcing them to move to the unreached areas and / or come up with products that appeal to those areas | • The government's ICT policy of 2007 that informed creation of the fund through the Kenya Information and Communications Act 2009 anticipated that it shall complement private sector investment. The framework therefore defines that the intentions of the Fund are not to distort the market and it is on this premise that stakeholder consultation is a key feature of USF management. |
| DHL | The USF seeks to interfere with the private sector market competition contrary to clause 5.4 of the | |

	framework. This is because many providers of courier and freight are not licensed to provide postal services. Such providers will not be levied hence placing DHL at a competitive disadvantage	
Theme 6: Operational Procedures		**Commission's Analysis and comments**
Safaricom Ltd	It is important to document the details of the project planning and implementation in the Manual of Operation. However, the manual should include; USF's governance and accountability provisions, the roles of USF administration, management, oversight board and USAC, the governance charter, procurement procedure, financial controls, reporting processes and requirements, selection criteria, monitoring and evaluation requirements.	• A comprehensive operational manual that provides greater detail on the fund's operating procedures is being finalized and will soon be shared with stakeholders. It shall address the issues that have been highlighted here.
Essar (yu)	The criteria for disqualification should be expanded. The non licensees bidding for projects should be allowed to do so provided they partner with a licensee. Disqualification criteria should also include disqualification for the failure to meet the fair and equal opportunities thresholds guided by the set rules discussed under guiding principles. However, a minimum time frame of quarterly review should be explicitly provided in this framework.	• The Authority has been and shall continue to promote public consultation on key issues including the USF in order to encourage stakeholder buy-in and participation. • The Authority shall uphold best practice in fund management in order to ensure its efficiency and effectiveness in addition to timely communication to stakeholders
Wananchi	The bidding process should include a requirement for bidders to demonstrate genuine execution capability. Not just financial but actual ability to technically execute construction. A couple of vague letters from related party banks and equipment vendors is not enough. Generally, there needs to be a methodical, predictable process. Operators need to be told what the roadmap is so that they can plan long way in advance of tenders coming out. Last minute work with short deadlines in the absence of understanding long term roadmap by the Fund makes it impossible for operators to either plan or justify the necessary investment to their boards and to integrate them with commercial budgeting processes.	
Hatari Securities	The USF framework will enable more strong relation between the Communication Authority of Kenya and the Operators in their participation in the Competitive Bidding / Reserve Auction Framework	
Theme 7: Enabling Policy and Regulatory Interventions		
Wananchi Group	Before a formal adoption of the fund, regulations are needed to encourage operators to share resources such as fiber optic cables, telecoms masts and power generators so as to drive down the cost of expansion of services. To get the much touted economic GDP benefits from broadband uptake there is need to promote the growth of fixed line infrastructure. NOFBI has so far had challenges due to poor management and prices are too high. Distributing bandwidth is simply too expensive. Furthermore any attempts at a "National Lit	• The Authority has commenced the process of establishing and enforcing Infrastructure sharing guidelines. • Efforts by the Ministry to streamline the operations of NOFBI are expected to address the related concerns.

	Backbone" will fail because it creates constant conflict on the question of "what is the right price" to which the answer is "zero". If operators could get access to dark fiber on IRU basis at subsidized prices (or better still dark fiber on all of Nofbi on IRU basis at lower onetime cost) then it would make the marginal cost of transport to rural towns much easier to justify.	
Theme 8: Access Gaps Study		**Commission's Analysis and comments**
Safaricom Ltd	There is urgent need for a fresh ICT access gap study as an important process prior to the implementation of USF.	• The ICT Access Gaps study of 2010 provided baseline information that is updated regularly based on information collected from operator returns. • Periodic Access Studies shall be undertaken in collaboration with the Kenya National Bureau of Statistics.
Telkom Kenya	USF programs should be informed by an updated access gap study since operators have continued with network expansion hence some services may have already been adequately rolled out.	
Essar (yu)	Setting of goals should be done after a fresh access gaps study has been conducted. Moreover, going forward there should be periodic review of the gaps in order to provide guidance on prioritization of programs to be implemented.	
Airtel Kenya	There is need to review the access gap study in order to reflect the current state of affairs considering that a lot has changed since the last study was conducted	
JTL	Regulations ought to be enacted to ensure periodic gap analyses are carried out and determine the steps to be taken when the gap reduces.	