

COMMUNICATIONS COMMISSION OF KENYA

Consultative Paper No.4/09

STAKEHOLDERS FEEDBACK ON THE CONSULTATIVE PAPER ON THE ESTABLISHMENT OF A UNIVERSAL SERVICE FUND

1. Introduction

On 7th August 2009, the Commission through a Consultation Paper No. 2/2009 initiated a consultative process on the Universal Service Fund in Kenya. Public and industry stakeholders were expected to provide their views and comments on some of the key issues around the USF as well as raise points that required further clarification from the Commission.

Submissions were received from the following organizations / firms;

- | | |
|---------------------------------|----------------------------|
| (a) Safaricom limited, | (f) Kiogora Mutai Company |
| (b) Zain Kenya (Celtel) | Advocates |
| (c) Postal Corporation of Kenya | (g) Le Business Connection |
| (d) Essar Telecom Kenya (YU) | (h) Intel Corporation |
| (e) Telkom Kenya limited. | |

2. Summary of Stakeholder Responses

In order to elicit responses on some of the key issues, stakeholders were invited to submit their responses to a set of questions in the consultation paper. An analysis of the responses will be highlighted below, while the summary of responses from the specific stakeholders is presented in Annex 1.

The stakeholders appear to be in general agreement that service penetration levels in rural areas are low due to a combination of factors including, high infrastructure costs, lower returns of investment in rural areas, a high preference of operations in urban areas, inadequate requisite infrastructure such as roads and power as well as the high cost of terminal devices.

As to whether a USF is necessary in view of the situation above, there is general consensus that it is important; however some are of the opinion that other competition and taxation incentives are necessary, that the USF should be considered only after exploring other non financial regulatory interventions. There is also the thought that the Government should take the lead on UA with the USF only serving to bridge the difference.

Responses on what the fundamental objectives that the USF should strive to achieve are, demonstrate the need for the fund. Objectives cited were diverse and include, but are not limited to;

- Deployment of backbone transmission infrastructure eg. Wireless and fiber in major towns and cities
- Passive infrastructure (ducts, dark fiber) for rural connectivity,
- capacity building and citizen training as well as ICT awareness,
- Baseline studies on investment viability and availing of such reports to investors
- Infrastructure/ services for disadvantaged special groups
- Promotion of entrepreneurship through capacity building.

With respect to what the priority areas of interventions should be the stakeholder's responses emphasis the need to for the fund and propose the following;

- Focus on internet connectivity especially in rural areas
- Facilitate access in totally underserved areas
- E-applications (education, health security etc.)
- Community access points

All stakeholders acknowledged that capacity building was necessary to create an informed society and suggested specific strategies including:

- Massive public awareness on the importance of ICT in development
- Education on its utilization for socio-economic development
- Support development of content and
- Assist institutions with limited resources such as schools and hospitals.

There is a general agreement that all licensed operators including broadcasters and postal service providers should contribute to the fund, as well the government and CCK. It is proposed that the Commission should take a lead by contributing a percentage of its income to the fund annually while others propose that at least 50% of the fund should be from government.

With regard to who should be exempted, the responses suggest that the levy be applicable only to operators who have been in operation for more than three years and an exemption granted to licensees who have achieved 100% coverage in the country and those that are in the roll out phase

The responses on what the minimum threshold should be are diverse including suggestions on placing a ceiling of 50 Million per operator, a threshold defined by the budgetary requirements of the fund, a levy of 1% on gross revenue as well as a fixed fee based on annual gross revenue.

Stakeholders generally had similar views on the type of projects that the fund should support. These include projects that meet the objectives of the fund with respect to facilitating accessibility, innovation and capacity building. There is also the view that selection of projects should be at the discretion of the advisory board and CCK as long as UA targets are met.

With respect to broadcasting and the USF the few stakeholders who responded on the issue, highlighted the need for the Fund to facilitate development in

making digital broadcasting available to all as well as providing incentives to investors who wish to invest in low penetration areas.

As to whom the beneficiary of the fund should be there are various opinions including licensees who contribute to the fund only to any one who meets the defined criteria and demonstrates capacity to handle specific projects.

Stakeholders appeared to take great issue on the governance and management structure of the fund which they pointed out was one of the most significant concerns. Among the key issues are:

- Need for industry stakeholders to be represented in the governance structure to ensure independence and impartiality.
- The independence of the USAC from the CCK board so that it is only confined to an advisory role and creating an extra level of bureaucracy.
- Define the role of the USAC in legislation.
- Recognizing that since all stakeholders cannot be represented in the council, transparency and a well defined complaint handling procedure is put in place to mitigate the concerns related to representation.
- Separation of USF funds from those of the Commission
- Unnecessary bureaucracy should be avoided.
- There should be a limit on how much of the Fund goes into administrative costs.
- The Fund should be managed and run by a body that is independent from contributors and beneficiaries to ensure impartiality. Stakeholders can be represented in USAC.

3. Issues Raised and proposed CCK response

In addition to submitting views on the queries posed in the consultation paper, the respondents raised a number of issues which the Commission wishes to respond to as follows;

(a) The role of non-financial regulatory interventions towards the attainment of Universal Access

Universal Access is among the key mandates of the Commission which it has endeavoured to execute through various regulatory mechanisms, most recently by promoting infrastructure sharing, adopting a Unified licensing regime in recognition of convergence and undertaking the ongoing review of frequency pricing.

The USF is considered a complementary intervention to facilitate access in commercially unviable areas, promote ICT awareness and utilisation among marginalised social groups as well as support innovation.

(b) Governance and Management structure

The Kenya Communication (Amendment) Act 2009 Sec 102 A (4), provides for stakeholder representation in the fund through USAC. Section 102A (4) requires the minister to appoint persons with experience in broad casting, telecommunications, postal, ICT or finance. There is a requirement that persons appointed do not have financial or other interests that could prejudice the functions of USAC. In light of this provision it is not possible for licensees to be part of USAC.

The function of USAC is advisory with the Commission being responsible for the Fund and as such bears the responsibility for the budget of USF.

To make USAC responsible for the budget would require an amendment of the Law.

(c) Determination of Access gaps prior to implementation of the USF

In the face of rapid technological advancement, it is noted that some of the recommendations of the Universal Access Study of 2004 may not be practical in present times. Consequently the Commission intends to undertake a Universal Access Gap study within this financial year to determine the true access gaps and establish estimates of the required subsidies necessary to support infrastructure roll out and service provision in these areas. The Act does also provide for other interventions such as support of capacity building and innovation which do not form part of the Access Gap study.

It is widely recognized that a key challenge faced by Universal Access Funds is long term financial planning in the face of the dynamic nature of the communications sector. For example at the time when the Universal Access study (2004) was undertaken public telephone booths were recognized as optimal solution in enabling access to basic voice services. Today universal access goes beyond the right to access of voice services and includes internet and even broadband services in some jurisdictions.

(d) Contributions

By providing various options for financing the USF, the law recognizes the enormity of resources required to achieve UA. On its part, the Commission is considering committing at least 25% of its surplus revenue for UA initiatives through the USF.

(e) Types of Services and Technology to be Financed by the Fund

In selecting projects, the Fund will be guided by the provisions made in the Act, proposed regulations as well as best practice including competitive bidding, least based subsidy and the principle of technology neutrality.

(f) Clarification on Loans / Subsidies / Grants

In accordance to the Act, the fund shall provide both loans and subsidies which we expect shall depend on the nature of the project and terms and conditions of implementation. However, if stakeholders have concerns over provision of loans from the USF, amendments to the Act can be sought accordingly.

(g) Underutilization of Universal Service Fund

A recent study conducted by the ITU asserted the concern raised by stakeholders over underutilization of funds in some countries and it being one of the challenges facing USF's across the regions. This situation has been attributed to a lack of clear targets in the strategic plan and under staffing of the USF administration.

Stakeholders shall be represented in the USAC to advise the Commission appropriately to ensure the attainment of USF objectives.

(h) Accountability of Fund

The proposed regulations require the Commission to maintain a separate account for the Fund. In addition it requires the Commission to prepare an annual report on the Fund for submission to parliament. For further

accountability the Commission may avail the annual report to all stakeholders and make the requisite provision in the proposed regulations.

(i) Universal Access Objectives and projects to be funded

The proposed regulations have outlined the objectives of the USF, this are expected to guide the commission in its identification of relevant projects to ensure that only those that qualify are funded.

(j) Provision for postal services

If it is the view of the stakeholders to include a basic letter within the Universal Access definition, this could be achieved through an amendment to the act which would essentially seek to revise the designation and mandate of the public postal licensee as well as require for a review of exclusivity rights in some postal markets.

ANNEX 1: RESPONSES TO QUESTIONS IN THE CONSULTATION PAPER

Telkom Kenya	Safaricom	Essar (Yu)	Kiogora Mutai	Le Business Connection	Zain Kenya
Comment on the service penetration especially in the Rural Areas					
<p>Statistics show that the country has a long way in achieving availability</p>	<p>Many rural areas combine low ARPU with higher costs due to high backhaul expenditures and poor infrastructure such as roads and electricity supply, which makes the penetration of the services in these areas difficult.</p>	<p>Service penetration levels in rural areas are abysmally low in comparison with urban penetration.</p>	<p>The level of accessibility of communication services to Kenyans raises an issue of great concern. Apart from mobile telephone, all other telecommunications and ICTs services are not being assessed by Kenyans.</p>	<p>In terms of universal service, factors contributing to poor penetration amongst the urban poor should also be considered from the perspective that lack of the endpoint connection devices such as mobile phones and computers also hinders access to all</p>	<p>We agree that penetration level in Kenya for telephony can be improved an that penetration level for internet are considerably low.</p>
Comment on the need for a Universal Service Fund					
<p>The need for a USF is appreciated as a cost recovery mechanism that enables the delivery of ICT to consumers who can not otherwise afford communications services. USF also ensures that these consumers have access to the latest technologies.</p>	<p>Before the fund is created, all possible non-financial regulatory and policy measures and innovative approaches should be taken to improve market efficiency and provide non-financial incentives to operators to serve rural areas. Such initiatives geared towards closing the market efficient gap include promoting open competitive markets, lower taxation and encourage infrastructure sharing.</p>	<p>The principle of Universal Access is a step in the right direction as a means of ensuring that ICT services are accessible to all. However, any levy proposed on operators to achieve the UA objectives should be construed as a fiscal measure for the Government to bridge its budgetary deficit, but as a corpus creation mechanism</p>	<p>It cannot be gain said that the level of penetration of telecommunications services in Kenya is very minimal. There is ample and documented data that in those countries that the Universal service Fund was introduced, there has been monumental development in access of network services to rural area and high cost</p>	<p>The negative economics associated with expanding coverage in rural areas need to be addressed through the USF corpus. This would serve as an incentive for operators to service these low potential areas and lead to higher penetration levels.</p>	<p>We do not however believe that USF is the only form of regulatory intervention that can achieve this end or that this the right time for the introduction of such a levy</p>

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		<p>to meet universal service objectives.</p> <p>Funds to qualifying operators should not be in form of loans rather as grants against specific rollout obligations.</p>	areas.		
What other fundamental Objectives should the USF strive to achieve?					
	<p>Accelerate mobile phone expansion project by using the fund to build mobile infrastructure</p> <p>Backbone transmission infrastructure including deployment of optic fibre cable, microwave and satellite wireless infrastructure in major towns and cities and to the small towns in Kenya</p>		<p>The other objective the fund should be to strive to achieve is maximizing of revenue for all operators within the limits of affordability of the services by all Kenyans. The USF must also be geared to protecting the small and medium sized operators from predatory practices of the major players who may take advantage of the subsidies availed by the fund to do undercutting in order to drive small players out of business</p>	<p>Promote research in cheap technological solutions for access for all and spur growth in research activities that will help us come up with homegrown technological solutions.</p> <p>The fund should also focus on helping the country become a producer of ICT products rather than just a consumer.</p>	<p>The help finance the expansion of telephony services to unserved zones.</p> <p>To facilitate and support sustainable economic growth and development for wealth creation and poverty eradication.</p> <p>To reduce, and eventually eliminate, the technological and digital divide in the country.</p> <p>Achieve progress towards full socio-economic inclusion of all citizen through the provision of universal access.</p>

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What other functions should the fund undertake in promoting ICT development?					
	A focused well-defined use of the fund on passive infrastructure to external rural availability and communal service provision.		Besides enhancing universal accessibility and availability of infrastructure ICT services, the fund should also be directed towards training citizens on use of these services.	Conducting feasibility studies on viability of investment in particular areas and making the findings of such surveys available to any would-be willing investor.	<p>Stimulate the development of local private business communities by providing suitable communication tools</p> <p>Encourage the promotion of specific solutions for access by disadvantaged people and people with disabilities.</p> <p>Promote capacity building programs aiming to create incentives for enterprises based on ICT applications.</p>
What should be the priority area of intervention?					
<p>Telecentre</p> <p>ICT capacity building for schools and local training institutions</p> <p>Access and availability of ICTs to the disadvantaged groups.</p> <p>Projects (e-health, e-agriculture, e-learning, e-</p>	Interventions are necessary at true access gap level. This level comprises areas or communication targets that are beyond commercial viability for the foreseeable future and hence financial support is definitely required. (Areas with poor electricity supply).		Emphasis should be availing internet services in Kenya. Internet penetration is only at 1% and the majority of those who use the internet being in the urban areas. The focus should be bringing internet to rural and other small urban areas.	Those areas that lack any form of modern communication at all. These areas should be given the first priority.	Education, health and security

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energy, etc.					
What are some of the effective ways to stimulate ICT capacity building?					
	<p>The fund should support capacity building and sensitization of consumers, ICT applications (e-education, e-health, e-agriculture, etc), development of content and support to institutions with limited resources (School and hospitals). The fund should also support deployment of advanced information and communications technologies, services including broadband.</p>		<p>Conduct a massive public awareness on the importance of ICT in development. The public should be made to understand how they can use ICT to improve the economic status and improving their living standards.</p> <p>Efforts should be taken to provide schools students adequate skills required to actively participate in the information society. In this regard computer labs should be established in most public schools to provide training and internet access to the community.</p>	<p>Partnering or funding organizations that are already working in low penetration areas or professionals from those rural areas who understand those areas well to come up with relevant solutions for the local communities.</p> <p>Ensure that you work with homegrown solutions rather than importing solutions that might not be relevant to the communities</p>	<p>The proposed COMESA policy guidelines on Universal Access</p> <ul style="list-style-type: none"> • Rural Public Call Offices • Networks for Rural Intermediate Agencies • Establishment of Internet Points of Presence • Establishment of Info-kiosks and telecentres • Investment development partnerships

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What interventions that the USF can support in the broadcasting subsector?					
			The Universal Service Fund should be used to develop structures that facilitate the simultaneous development of broadcasting and information technology on a universal basis. It can also be used to make the digital broadcasting available to all.	The fund can be used to provide loans to investors willing to risk investing in regions with low penetration. Low interest loans may spur growth in this sector.	
Who Should Contribute to the Fund?					
The approach taken by Kenya Communication Amendment Act 2009 to levy all licensed operators is the best way to go. We however feel that certain options ought to have been considered in arriving at this determination to charge a universal levy. For example was there an option to consider assessing the contributions by operators on the basis of traffic which could either be call numbers or number of minutes. This	All licensed operators including broadcasters and postal should contribute to the fund. Through legislative amendment ensure that any disbursement of the Fund should be to licensees who are within the ICT industry and who will carry out very specific ICT related activities with money from the Fund. This is necessary to prevent any individuals or corporate bodies from claiming a legal right to access the funds.	All licensees (Telecom & Broadcast), Government and Communications Commission of Kenya. Mobile sector is currently overwhelmed with levies; to ensure that the USF obligation is not passed on to consumers the fund should be offset with a concession in other levies applicable to the sector.	Every holder of a licence granted by the Communications Commission of Kenya should be liable to contribute to the fund, because such licensee is deemed to be providing services that are universally required.	All licensees who have operated for more than three years. All licenses who have not covered the country 100%.	All licensees of the Commission

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could be one method of providing for an equitable form of contribution according to the size of the operators network					
Who should be exempted from contributing?					
	No licensed operator should be exempted	New entrants in the rollout phase should be exempted during the rollout period, to allow optimum allocation of their resources in meeting the base license conditions.	<p>A <i>de minis</i> approach should be adopted where by company whose gross revenue below a certain amount in a year such that their contribution to the Universal Service Fund will be less should be exempted from contributing in that particular year.</p> <p>A Public utility providing telecommunications services especially one that is financed from public sources should be exempted from making contributions to the Universal services fund. The rationale of exempting Public utilities that receive their support from the consolidated fund from contributing to the fund is that they are already beneficiary of the fund.</p>	<p>If an operator currently covers 100% of the country's landscape such an operator should be exempted.</p> <p>Every operator who has not operated for more than three years should also be exempted, this will help cushion startups.</p> <p>If an operator does not fall into any of the two categories above then should contribute to the fund without a minimum threshold.</p>	

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What should be the minimum threshold?					
	Kshs 50 million should be the ceiling on the contribution to the fund from operators	For any maximum contribution threshold to be defined, a proper budgeting exercise is required to establish the source and deployment of funds, specific to USO.	<p>The minimum threshold should be based on a criterion that will be fair to the operators' business interests and at the same time it must be a threshold that ensures that the amount contributed to the Fund is sufficient enough to have an impact</p> <p>The levy should be increased to 1%, unless the operators can prove that a levy of 1% of their gross will injure their business interests in a big way. Besides the operators stand to benefit with increased access of their services by the citizens, thus a threshold of 1% of their gross revenue is justifiable.</p>		In Kenya the tax burden shouldered by operators is about 21% which is high compared to Uganda. The preference is for the Commission to charge a one off fixed fee according to scale based on annual gross revenue.

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Should CCK and the Government Contribute to the Fund?					
	<p>Both CCK and the Government should contribute to the Fund. CCK for instance should contribute a specific percentage of its income to the Fund annually.</p> <p>Parliament provision and contributions from development partners and donors.</p>	<p>It should apply to all industry players Government, CCK and licensees. This would present a broader base for funding the corpus & also present an opportunity to minimize levy shares.</p>	<p>The government should contribute to the Universal Service Fund. The fund should be seen in the wider context of serving general interest of the people, improving the livelihood and reducing poverty, which are key functions of any government. The amount of money that can be raised from the licensed operators cannot be sufficient for fund.</p> <p>The CCK should not contribute to the Fund. The proposed management and implementation structure put the Commission through an autonomous unit in charge. To achieve impartiality, the CCK should not contribute to the fund and only the governments and licensed operators should be</p>	<p>Yes at least 50% of the fund should be from the government. This will help demonstrate the government's commitment and support to the objectives of the fund.</p>	<p>Yes, CCK and the government should contribute to the fund as this is an established practice in other jurisdictions e.g. Nigeria and Madagascar.</p>

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			contribute.		
Who should Qualify for the Fund					
USF ought to be making grants in subsidy form to operators bidding for the lowest subsidy.	Only the licensees who contribute to the fund should qualify for the fund.	The criteria needs to be defined by the Board and implemented by the management committee based on clear and transparent vetting and approval processes.	Persons living in rural areas and also in poor urban areas where market function cannot guarantee access to these services.	Any Kenyan citizen with a viable idea but priority should be given to those who can exhibit capability to create employment and with a proven track record in handling specific projects. Persons with ability to complete projects according to specifications and repay on time.	Qualification for the fund should be based on categorization of the level of service in a particular community.
Which Projects should Qualify for the Fund					

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<p>The kind of project that should be considered for the fund allocation should be difficult projects and the testing of new and innovative projects like e-energy, e-health and e-agriculture. Other projects could be telecentres, ICT capacity building.</p> <p>ICT accessibility and availability to persons with disabilities etc Specifically consider a National Relay Service for those who are deaf or speech impaired as well as special categories of emergency numbers for disabled persons.</p>	<p>Only the projects that fall under the objectives of the fund</p> <p>Licensees should be entitled to participate in evaluation of proposed projects before fund award in order to prevent funding projects that do not contribute to the UA targets.</p>	<p>Broadly all rural expansion & e-government projects in communication services should be eligible to apply for USF grants based on their respective merits.</p>	<p>Projects for the establishment of sustainable rural telecentres should be first in priority. Rural telecentres are public facilities that offer shared access to ICT.</p> <p>The fund can also be utilized in equipping Public schools with computers. Most schools in rural areas. This would enable the school to train students from an early age in their education on how to use computer as well as using the internet for education services</p>	<p>To promote innovation, the type should not be limited, the advisory board and CCK should have the discretion to assess the viability and be expected benefits of every project.</p>	
Comments on the Proposed Governance and Management Structure					
<p>Governance is the most significant issue for the success of the fund. The element of independence and impartiality of the advisory council has to be</p>	<p>A clear administration structure based on detailed regulations clearly defining administrative procedures for the fund is required to ensure good governance and application of</p>	<p>The fund need to be administered by a USO administrator, who should constitutionally empowered to manage the Fund, suitably supported</p>	<p>The proposed governance and management structure of the fund is acceptable but it is notable that the management policy of the universal service fund must</p>	<p>Good and well representative</p>	<p>Zain Kenya welcomes the proposed management and governance structure of the USF and wishes to point out that the critical element is to create certainty and</p>

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<p>assured. However if it exists merely to give advise to the CCK board, this may be an unnecessary bureaucracy and burden to public funds. In which case an alternative of a special board committee co-opting relevant stakeholders should be considered.</p>	<p>best practices.</p> <p>Establish clear objectives and a strategic plan derived from public consultation with all stakeholders.</p> <p>The role, mandate and membership of the UASAC should be provided for in the Act through a legislative amendment.</p> <p>Set up clear, realistic and measurable goals including Quality of service and level of consumer satisfaction indicators through SLA's.</p> <p>Bidding and selection process should be based on open tender and least subsidy auction.</p>	<p>by an organization constituting the USF Board.</p>	<p>adhere to international accepted practices.</p>		<p>confidence in the USF framework so that all stakeholders may believe and support the process.</p>
<p>How can the Sector be represented in the USF?</p>					
<p>The advisory council should have fair representation from all stakeholders in order to make it informed but neutral.</p>	<p>There should be a representative of all contributors to the fund. If the levies are based on percentage of the turnover, then the representation to the fund management and the voting should be based on the contribution to the fund.</p>	<p>All fund members (including licensed operators) should be represented on the Board. The Board would be responsible for policy and strategic matters pertaining</p>	<p>All players in the telecommunication sector should be included in policy development process. However, the fund is best managed by a body that is independent of the parties</p>	<p>It may not viable to have every interested stakeholder represented, however if there is transparency in the management and implementation of the</p>	<p>We propose that the telecommunication sector be granted the opportunity to have each operator nominate a member to the body involved in the USF fund management to represent</p>

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		to the Fund.	who contribute and benefit from the fund. The sector can be represented in the advisory board which has the mandate of advising the management board as well developing policies for the implementation of the fund	fund and there are avenues to raise concerns and complaints, then that should be adequate.	their respective interests, or in the event that is not a feasible option, to have the telecommunications operators nominate one representative in the management and disbursement of USF fund.

Table 2: Comments from Postal Corporation of Kenya

<p>i. The need to widen the scope of universal access to include basic letter and to define the Universal Service Obligation for the Kenyan environment as different countries at different levels of development. The Corporation recommends a hybrid system that can accommodate the needs of all citizens.</p> <p>ii. The cost of logistics in postal and courier sub-sector is very high and contribution based on gross revenue will leave very little for the sector to invest as a bigger percentage of the revenue is used to finance operational costs.</p> <p>iii. That all licensees and other stakeholders including CCK and government should contribute to the fund but only operators that are capable of implementing sustainable projects to meet intended objectives should be funded.</p>
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ANNEX 1: CONSULTATIVE PAPER ON UNIVERSAL SERVICE FUND

COMMUNICATIONS COMMISSION OF KENYA

Consultative Paper No.02/09

Implementation of the Universal Service Fund

1. Purpose and Overview of the Consultation Paper

Part IX of the Kenya Communications Amendment Act, 2009 provides for the establishment of a Universal Service Fund (USF) to be managed by the Commission. The aim of the fund is to facilitate the rapid achievement of national policy goals for universal access to Information and Communication Telecommunications (ICTs).

Access to affordable and reliable communication services has been recognized as a fundamental human right that every government should strive to provide. The liberalization of the sector has addressed the market efficiency gap while the true access gap still remains in areas that may be considered uneconomic thereby making availability and accessibility of ICT services difficult for many. The Universal Access study of 2004 identified close to 90 administrative divisions in the country that had no access to any other form of communication except radio.

As illustrated in Table 1, the current population coverage by mobile operators is more than 80 per cent. This means that close to 20 per cent of the population has no access to voice telephony. Likewise, even among the 83 percent of the

population covered by the operators, not every person is connected as only about 16 million lines are connected and, in most cases, individuals have multiple lines (SIM cards). Whereas the voice telephone service within the mobile sub-sector has recorded an impressive performance, the same cannot be said about the Internet market. The current estimate of Internet users in the country is about 3.4 million people, of which 80.7 percent are in Nairobi and 9.4 in Mombasa. This illustrates that 90% of Internet users are based in urban areas. This low consumption of service and uneven distribution of customers could be attributed to ICT illiteracy, lack of services and the high cost of connectivity.

As illustrated in table 1, the indicators of the universal access/service shows that the achievement of universal access to ICT services is still a long way off. The USF is designed to address these concerns.

Table 1: Key Indicators of Universal Access/Service in Kenya (2006-2008).

Indicator	2006	2007	2008
Population (Million)	36.10	37.20	38.30*
Fixed Teledensity	0.86	0.90	1.60
Effective Teledensity	20.33	30.75	42.39
Mobile Penetration	21.62	33.65	43.64
Number of Fixed Payphones	7,913	5,805	5,210
Number of Community Mobile Payphones	29,888	20,822	13,980
Mobile Population Coverage	65%	77%	83%
Mobile Land Coverage	19%	27%	32%
Connectivity to Villages (Schools)	Minimal	Minimal	Minimal
Community Access Points	-do-	-do-	-do-

(Telecentres)			
PWDs access points (Telecentres)	-do-	-do-	-do-
Number of Internet Users	1,054,920	1,423,546	3,359,552
Internet penetration	Less than 1%	Less that 1%	1%
Number of Post Offices	734	725	733
Number of Courier Outlets	538	598	608

Source: CCK Database, CCK Annual Report and Economic Survey 2009.

* Provisional.

The fund seeks to contribute to national economic and social development by enhancing the universal accessibility and availability of ICT infrastructure and services to all, particularly to rural residents and economically and physically disadvantaged populations. The USF will achieve this by leveraging infrastructure investments in high cost areas, promoting technological innovation and supporting the establishment of efficient, self sustaining market-oriented businesses which will continue to expand access to ICTs on their own initiative, requiring the minimum amount of USF financing.

The purpose of this consultative paper is to provide stakeholders a foundation document that will stimulate and focus the discussions on a USF that will be held at various consultative fora. It also gives the stakeholders an opportunity to comment on the proposed framework in order to foster a common understanding on the implementation of the USF as provided for under the Act.

The Commission therefore wishes to seek the views of the industry as part of the process of developing the requisite regulatory framework for the Fund and ensuring its establishment.

The Commission invites comments on the service penetration levels in rural areas in particular

2. Background

The rapid and continuing growth and development of information and communications technologies (ICTs) is transforming the ways in which we live and work. ICTs have become a pillar of modern society and communication services have been accepted as a means to empower communities to participate and contribute to national development. Consequently, every person is entitled to affordable and accessible wide range of ICT services to enable them participate fully in all aspects of economic, social, cultural and democratic life. Universal Access to essential ICTs is therefore recognized as a principal policy objective in the development of an 'information society'.

The Universal Service Fund is recognized globally as the best option to funding and realizing Universal Access objectives. In countries where the USF is a well established mechanism, it has enabled penetration and utilization of communication services. Annex 1 provides benchmarking of some selected countries that have successfully implemented the USF.

Locally, the need for a fund is articulated in the Universal Access Study (2004) which proposed the institutionalization of a USF that will facilitate mechanisms of extending communications services to un-served areas, support local content development, build ICT capacity and promote innovation.

Since the completion of the study, the Commission has successfully implemented some of its key recommendations. Firstly, it has promoted the institutionalization of the Fund through the establishment of a legal framework in the Kenya Communications Amendment Act No 1 of 2009. Secondly, the Commission provided seed money for the implementation of Universal Access pilot projects whose successful implementation has provided a useful framework towards implementation of universal access strategies in Kenya. The pilot projects have also gone a long way in achieving some fundamental Universal Access objectives. Lastly, the Commission has established a Statistical section and equipped it with relevant software including ArGIS mapping and SPSS data management systems. The section has been instrumental in informing the identification and selection of un-served and underserved areas, communities and schools for Universal Access Funding as well as informing other regulatory interventions.

The Commission invites comments on the need for a USF in Kenya.

3. Legal Framework

The Universal Access Study recommended that a legal and regulatory framework be put in place to enable the attainment of Universal Access objectives. Consequently, the KCAA 2009 provides a legal framework for the establishment of a USF that will be administered by the Commission through a Universal Service Advisory Council.

The Commission therefore wishes to seek the views of the industry as part of the process of developing the requisite regulatory framework for the Fund as well as the operational guidelines.

4. Key Issues of the Universal Service Fund

4.1. The rationale for the Fund

The traditional regulatory strategy of imposing Universal Service Obligations on incumbent operators has proven to be largely ineffective particularly where the penetration is low and the burden of achieving Universal access is tremendous. This model was used in Kenya for many years with modest results as evidenced by low growth in fixed line telephony and postal outlets penetration rates.

Since liberalization and the subsequent mobile revolution, rural service expansion has become more commercially attractive due to cost effectiveness and deployment advantages of wireless technologies. While there has been aggressive roll out in rural areas in Kenya, it would take some time for the market to create enough commercial incentives to bring connectivity to high cost remote regions and low income households. Consequently, some form of funding is necessary to finance gaps which still exist between the market's commercial boundaries and the targets that the regulator and the government wishes to achieve in order to ensure that all Kenyans have access to communication services.

The Universal Service Fund is a complementary initiative that is geared towards bringing about effective investment in ICT services and successful up-take beyond the low cost markets. The Commission plans within the next financial

year to undertake an access gap study to determine the commercially unviable locations in the country and the subsequent funding requirements.

With the increasing importance of advanced ICT services, the Fund is also necessary in provision of Internet services, access to computers and other devices, provision of postal and courier services as well as training support in rural areas. These activities are necessary to stimulate demand and utilization of ICT services in the country.

It is therefore expected that with effective and fair utilization of the fund, there shall be increased focus in boosting telecom penetration in remote areas, improving Internet penetration and advancing the enhancement of e-services both in rural and in urban areas of the country.

4.2. Objectives of the Fund

The objective and purpose of the fund is to support widespread access to communications services, support capacity building and promote innovation in ICTs. In using the Fund to promote Universal Service the Commission shall;

- (a) Encourage efficient access to and use of information and communications networks and service throughout the Republic of Kenya, with special focus on rural, remote and under-served areas with a goal of promoting social, and economic development;
- (b) Ensure reasonable availability and affordability of basic and advanced information and communications services at the community, household and individual levels, particularly where the market may be unable to deliver independently such services in a financially viable manner.
- (c) Promote skills development in ICTs

- (d) Promote technological innovation in the communication sector.
- (e) Provide support for the introduction and expansion of communication services to schools, health facilities and other organizations serving public needs
- (f) Facilitate development of and access to a wide range of local and relevant content; and
- (g) Promote reasonable availability and affordability of basic information and communications services to persons with disabilities.

- a) What other fundamental objectives should the USF strive to achieve?*
- b) What other functions should the fund undertake in promoting ICT development in Kenya?*
- c) Given the wide range of possible interventions through the Fund, what, in your opinion, should be priority areas of intervention and implementation?*
- d) What are some of the effective ways to stimulate ICT capacity building, especially for underserved communities in Kenya*
- e) Propose some specific interventions that the USF can support in the broadcasting sub-sector.*

4.3. Funding Mechanism

Pursuant to the KCAA 2009, the USF will be financed through funds received from licensed operators as well as from government and other partners. This approach is based on best practice, benchmarking and recommendations of the Universal Access Study.

Consistent with technological convergence that has blurred the distinctions between technologies and services, it is expected that all licensed network operators and service providers including postal operators shall contribute to the USF.

The Commission recognizes that the Fund could pose a certain degree of challenges to start-ups and small companies and, therefore, considers a threshold for contributors. The criteria could be based on a minimum annual gross turnover of Ksh. 10,000,000.

4.3.1. Contribution Level

In coming up with the levy, the Universal Access Study embraced a consultative approach that incorporated stakeholder opinions as well as international benchmarks to derive an acceptable and reasonable contribution. Following this process the study recommended a levy of 0.5% of annual gross revenues for telecommunications network and service providers. This levy shall also apply to the broadcasting operators. For the postal and courier operators, they will be expected to contribute an additional 20% of existing annual fees.

We wish to underscore that the proposed 0.5% is among the lowest levels of contribution in comparison to other existing funds across the globe which range anywhere between 1% and 6% (See Annex 2).

- a) Should all the licensed operators contribute to the fund?*
- b) Who should be exempted from paying the levy and why?*
- c) What should be the minimum threshold on the licensed operators to contribute to the fund?*
- d) Should CCK and the government also contribute to the Fund?*

4.3.2. Review of Levy Charge

The legislative framework provides for the revision of the levy when need arises. We propose that as UA objectives are met or as targets are changed or the growth and revenues available in the sector change, the level of contribution shall be re-evaluated and adjusted from time to time. This process shall be undertaken in consultation with the industry.

4.4. Administration, Management and Oversight for the Fund

The Commission shall manage the Fund on a day- to-day basis under the guidance of an advisory council. The role of the advisory council is expected to be:

- (a) Provide recommendations on the policy direction of the administration and management of the fund to the Commission's board
- (b) Assist in the development of the appropriate socio-economic criteria to identify the geographic areas, population groups, institutions and organizations that may be eligible to benefit from the fund projects
- (c) Advise the formulation of annual Operating Plans.
- (d) Assist in the development of criteria for evaluating project proposals for funding by the Fund
- (e) Oversee the monitoring and evaluation of the fund projects; and

The CCK board shall be responsible for approving the operating plans and budget of the USF.

The advisory council is expected to have representation of relevant stakeholders with its members having knowledge and experience in broadcasting, telecommunication, postal systems, information technology or finance. It is

expected that operators' interests shall be articulated through representation in the advisory council.

The daily administrative functions of the USF shall be undertaken by a USF secretariat in form of a fully dedicated department within the Commission responsible for the design of UA strategies, policies and monitoring their implementation.

Though the USF will be a portfolio unit under the Commission, the operation of the fund shall be an autonomous function. Subsequently, the department shall be fully equipped with staff possessing the requisite skills for the management and administration of the fund. The department shall therefore be structured to include the following sections:

- **Funding and Subsidy:** Responsible for efficient management of the financial resources including financial planning, budgeting and fund disbursement.
- **Policy and Strategy:** Responsible for policy analysis as it relates to the fund, conceptualizing strategic and operational plans for the fund, incentive design, economic and impact assessment of various projects, demand access gap analysis, research and studies.
- **Project and Monitoring:** Responsible for implementation and monitoring of all USP projects and ensuring compliance with set standards.
- **Legal and Board services:** Responsible for the USF's legal and secretarial matters, ensure statutory compliance and responsible for all contracts and legal documents.

a) Comment on the proposed governance and management structure and its adequacy to implementing the USF in Kenya?

b) Any other proposed key skills to be included in the USF structure and administration?

c) How can the sector be represented in the USF fund management?

4.5. Bidding and Selection Process

The methods of bidding and selecting beneficiaries for subsidies, loans or grants under the UA program shall be in line with the Public Procurement Act. Additionally the principles of the Public Private Partnership guidelines (2009) shall be adopted to govern the partnership and project management elements between the UA Fund and the beneficiaries.

The Commission shall develop suitable methods to establish criteria to determine projects that are eligible for funding. In determining Fund projects, clear and transparent procedures will be applied which may include public consultation. The funds may only be used to finance projects that are fully defined in advance of invitations for bids including all anticipated terms and conditions, timeframes and eligibility criteria.

The Commission shall ensure that the project terms of reference shall not unduly favour any particular person, nor shall they require specific technological solutions but be structured in a manner that permits the greatest innovation and creativity by bidders.

In order to ensure that beneficiaries implement projects in accordance to the agreed terms and conditions of the contract, sanctions are proposed for non compliance. This may include requiring a beneficiary to compensate the amounts of the fund paid including any administrative and legal costs incurred.

- a) *Who should potentially qualify for Fund support and why?*
- b) *What types of projects should qualify for fund allocation?*

4.6. Financial Management

All finances shall be in line with international financial best practices including independent audit, publication and annual reporting of financial statements. They shall also be governed according to the UA's Annual Operating Budget. The USF shall establish its own separate account independent from the Commission's regular accounts.

5. WAY FORWARD

Based on the comments in response to this consultative paper, the Commission will develop appropriate guidelines and operational requirements to facilitate the successful implementation of the USF.

The industry and stakeholders are requested to submit their inputs and views on this paper to the address below before the close of day 7th September 2009.

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BENCHMARK OF LICENCE AND USF LEVIES

Region¹	Country²	Percentage Contribution by Operators	Type of Program Financed (US = Universal Service; UA = Universal Access)	Annual licensee fees
Africa	Uganda	1% (All licensees)	UA	Fixed USD 500 - 1000
	South Africa	0.50%	UA	1.5%
	Nigeria	40% of annual license fees	UA	2.5%
	Tanzania			1%-1.5%
	Burkina Faso	2.00%	UA	n/a
	Rwanda	2% (40% contribution) Government budget 60%	UA	1%
Asia	Malaysia	6.00%	US & UA	0.5%
	India	5.00%	US & UA	6% – 10%
	Mongolia	2.00%	UA	n/a
Latin America	Chile	Government Budget	UA	Varied Fixed
	Peru	1.00%	UA	n/a
	Colombia	5% (Plus Government contribution)	UA	n/a
	Guatemala	Spectrum auctions	UA	n/a
	Dominican Republic	2.00%	UA	n/a
Europe	Russia	2.00%	UA	n/a
North America	United States of America	Less 4% (Plus state levies	US	Depends on technological and regulatory aspect as well

¹ In development countries, the fund generally promotes public access to telecommunications and the Internet and the contributions required from the operators gross revenues are most typically in the range of 1-2% of the those revenues.

² Note that the countries are chosen depending on the data availability and to represent regional practice and the various stages of development.

				as approved budget.
	Canada	1.5% (Plus federal contributions)	US	n/a

USF BENCHMARKS

Most countries around the world have implemented the Universal Service Fund which involve levying fees ranging from 1% - 6%. But in few cases such as Nigeria the fund is financed through an allocation of 40% of the annual operating fee while some like Chile rely on government funding.

As illustrated in the following cases below, Universal Service Funds include programs that aim at ensuring that rural areas and other high cost areas benefit from communication services; communities, schools, health centres and libraries have access to ICT services as well as capacity building.

1. SOUTH AFRICA

The Universal Service Fund was established in 1997 by the Telecommunications Act of 1996. The Fund is jointly administered by the Department of Communications, and the Universal Service and Access Agency of South Africa (USAASA). The USAASA was established under the Electronic Communications Act No. 36 of 2005, to promote the goals of universal access and universal service in the under serviced areas of South Africa. Under the Act, the Fund is authorized to;

- a) Provide direct subsidies to needy people to defray the higher cost of telecommunications services due to rate rebalancing
- b) Subsidize the cost of network expansion to underserved areas by operators
- c) Enhance media diversity
- d) Promote community broadcasting
- e) Training local production
- f) ICT capacity building

All communications licensees including broadcasters must pay annual contributions of up to 0.5% of their annual revenue to the Fund as stipulated in the 2001 Telecommunications Amendment Bill

The Fund has provided financing to set-up 133 telecentres, it has also provided subsidies to E-school Cyberlabs, ICT Telecontainers, community radio stations and Community Digital Hubs etc. Currently there is an ongoing debate to determine whether the USF should be used to subsidise the cost of set up boxes for poor citizens upon migration to digital broadcasting.

2. NIGERIA

The Federal Government of Nigeria established a Universal Service Provision Fund (USPF) in 2006 to facilitate the rapid achievement of national policy goals for universal access to telecommunications, information and communication technologies (ICTs). The USPF is financed primarily through an allocation of 40% of the 2.5% annual operative fees.

The fund is targeted towards supporting the following projects:

- Backbone Transmission Infrastructure including the deployment of Optic fibre cable and microwave and satellite wireless infrastructure in major towns and cities and then small towns and villages in Nigeria.
- School access program which provides connectivity to government schools libraries and public institutions in undeserved, underserved and rural areas.
- Rural broadband Internet project to facilitate broadband network rollout in undeserved, underserved and rural areas.

- Community communications centres designed to extend voice, Internet, ICT training and other services to un served communities.
- Accelerated mobile phone expansion project which is a vehicle for facilitating roll out of mobile phone services in unserved areas by enabling communities, NGOs and private entrepreneurs to build and operate mobile telephone infrastructure (Base transceiver station, communication towers etc)

The USF is administered by the regulator, Nigeria Communications Commission through a Universal Service Provision Fund department which operates autonomously.

3. UGANDA

Rural Communications Development Fund (RCDF) was established in 2003 to support the development of a commercially viable communications infrastructure in rural Uganda to promote social, economic and regional equity in the deployment of telephone, Internet and postal services.

To utilize the resources of the Fund efficiently, subsidies are awarded through a competitive process and only available in geographical areas and to services that are in definite need of assistance. Specifically, funds are only available to areas where service provision is not feasible or unlikely to be provided by operators within the next 1-2 years without subsidy.

All licensees in the sector (including telecom operators, the postal service, couriers, ISPs) are required to contribute 1% of revenues to the RCDF. By

2007, the fund had collected over US\$ 12 million, including World Bank funding of US\$ 5.0 million.

The RCDF is financing the following:

- a) Telephony in all 154 sub-counties not served by the major operators;
- b) Special equipment that would extend the reach/coverage of existing telecommunications networks into rural and remote areas;
- c) Internet points of presence and wireless access systems at district centres;
- d) A national Internet exchange point (IXP) to facilitate inter-ISP traffic;
- e) Vanguard' Internet access projects for schools, NGOs, small-scale commercial telecentres and Internet cafes at sub-district level; and
- f) Pilot content creation projects in telephony and Internet areas.

The 154 underserved sub counties of Uganda have been divided into 3 Universal Access Areas as follows;

- a) Universal Access area A comprises 44 underserved sub counties in the East and North-East. Network construction in these sub counties is ongoing and 390 payphones are expected to be installed;
- b) Universal Access area B includes 50 underserved sub counties in the Central and North-Central regions. 521 public payphones will be deployed;
- c) Universal Access area C consists of 60 underserved sub counties in the West and North-West. The project includes network construction and installation of 618 payphones

The total project costs for all three regions under the telephony component was estimated at around US\$ 11.7 million and the total subsidy awarded was US\$ 5.2 million. The subsidy had originally been estimated at US\$ 8.6 million.

In tendering for 32 Internet POPs, MTN was awarded a US\$ 685,000 subsidy for 22 POPs and UTL was awarded 10 POPs, for a subsidy of US\$ 295,000. The two bids combined amounted to about 73% of the maximum subsidy available for Internet POPs.

4. PERU

The Fondo de Inversión en Telecomunicaciones (FITEL) in Peru was established in 1993 to finance new public access telephones (pay phones) in rural areas. To realize its Universal access policy, the government issued the FITEL Regulation in September 1998, which sets out the administrative procedures for FITEL's operations. The regulation also establishes the criteria for selecting the localities that will receive funding for service expansion.

The fund is administered by the communications regulator, OSIPTEL, which collects 1% of gross revenues from the telecommunications sector to finance FITEL. In November 2006, the fund reportedly had US\$ 143 million in resources.

Peru has defined universal access as access to a set of essential services that includes voice telephony, fax and data, and free emergency calls. By January 2005, over 6,500 rural villages had at least one public telephone financed through FITEL.

In addition to telephony, FITEL also funds Internet and information system projects. In 2007 FITEL funded connectivity services in 3,010 communities providing Internet service in 2,840 locations and telephony in 1,535. More recently Fitel funded fixed and wireless broadband networks in earmarked locations in Peru.

5. MALAYSIA

The Universal Service Provision (USP) Fund in Malaysia was established in 1998. When the Fund was created, incumbent Telekom Malaysia was the sole universal service obligation (USO) operator (the only operator with access to the Fund) for an interim period of 2 years with costs recovered from a USO charge on all interconnecting traffic.

The interim period was extended to January 1, 2002 to enable the Malaysian Communications and Multimedia Commission (MCMC) to finalize the new policy framework. Contributions by all service providers commenced at the end of 2002.

Each fixed and mobile operator is required to contribute to the USO fund in proportion to its share of network revenues, which is weighted by the types of services offered. The Commission's system for universal service provision affords access to both basic telephony services and Internet services. The system also defines objectives for both collective access and individual access to services. The funds can be used to provide infrastructure and services in areas with penetration levels of 20% below national averages.

Fixed and mobile licensees annually contribute 6% of their weighted annual revenue from designated services (including local, national long-distance, international long distance, mobile, IP telephony) to the Fund. The 6% weighted revenue is roughly equivalent to 2% of gross revenues. On average, the fund collects in the range of US\$ 178 – 207 million annually.

Service supported by the fund includes basic telephony, Internet access, public payphones in rural areas and broadband. At a later point, universal service will not be confined only to the telecommunications industry, but extended to broadcasting and information technology.

As of April 2007, 40,000 individual phone lines and 2,500 payphones had been installed in under-served areas financed by the fund. The fund has done four rounds of funding, with a fifth round in the planning stages. Phase 1 started in 2002. The fund financed service and maintenance for 5 years at 220 schools – 110 in Sarawak and 110 in Sabah.

Phase 2 started in 2003 and provided funding for 50 rural clinics rural clinics and 176 rural libraries. Phase 3 commenced in 2004. Projects to extend service to 309 rural clinics and 187 rural libraries received funding. Phase 4 started in 2005 and funded the connection of 147 rural and district libraries. All four phases incorporated funding for training.

The government has given approval for MCMC to use the USP Fund for rolling out broadband services in underserved areas and communities. Work is currently being conducted by MCMC to amend the USP framework to better address the goals laid out in the National Broadband Plan.

6. MONGOLIA

Universal Service Obligation Fund (USOF) was established in 2006 with the objective of establishing communications centres at each District, to provide a range of services including telecommunications and Internet. The fund is managed by the Communications Regulatory Council and all operators are expected to contribute 2.0% levy on taxable revenue.

The USOF plans to support a range of initiatives aimed at extending access to telephony and Internet services, including:

- a) Satellite-based public access telephony service for the herder community – one terminal would be provided for each group of approximately 100-150 herder families, located at or in the vicinity of Bagh headquarters. The project would provide a total of 1,500 terminals at a cost of US\$ 6.0 – 8.0 million.
- b) Competitive voice and data services through wireless access points – the service would be provided to residents and businesses in commercially viable District centres, average 100 lines per District. Up to 200 systems would be provided at a cost of US\$ 4.0 – 8.0 million.
- c) Internet public access centres (PAC) – one PAC per District would be built, located at a school, bank, telecom service provider, small business or other publicly available locale, including initial training and support. The project would finance up to 200 PACs at a cost of US\$ 3.0 million.
- d) Internet in schools – Internet support would be provided for 3 years in vanguard schools in District centres. The project would finance up to 200 schools at a cost of US\$ 3.0 million.
- e) Public mobile (e.g., GSM or CDMA) service – service would be available to residents within line of sight of one base station located at or in the vicinity of the District centre. A total of 30 base stations would be installed at a cost of US\$ 2.0 – 3.0. Million.

The total cost of the above initiatives is US\$ 18.0 – 25.0 million.

7. CHILE

The Fondo de Desarrollo de Telecomunicaciones (FDT) was established by a 1994 amendment to the telecommunications law of 1982 and is financed from the Chilean national government budget. All operators are eligible to receive funds, which subsidize the installation of public telephones in the marginal, low-income rural and urban areas. The original goal for the Fund was to provide public telephone service to about 6,000 unserved localities – a target that was met during the period from 1995-1999

Once a year, the regulator SUBTEL collected requests for payphones from regional and local authorities, neighbourhood associations, telecom operators and the general public. The requests were then grouped into projects, each typically consisting of 20-50 localities. Projects considered desirable (as determined by a detailed cost-benefit analysis) for the general economy, but unlikely to be commercially viable on their own, were added to the pool of eligible projects. Subsidies were then distributed through competitive bidding. The bid evaluation emphasized the lowest proposed subsidy for a particular project combined with a commitment to short delivery time.

After the Fund achieved Chile's social telephony objectives were achieved, the government redefined the Fund to support telecentre projects. Projects and programs financed by the fund since 2002 include:

- a) The telecentre program for all 341 municipalities;
- b) Internet subsidies for 667 rural schools;
- c) Internet centres in 200 neighbourhood selected by the local housing ministry.
- d) Fibre optic backbone extension project, which includes funding for a WiMAX installation;
- e) Extension of mobile service into unserved areas

