



Draft Regulations on the Universal Access Fund (Creation, Management and Deployment)

2014
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Contents

- Part I Introduction3
 - 1. Preamble3
 - 2. Purpose and Scope of these Regulations.....3
 - 3. Objectives of these Regulations.....3
- Part II Creation of the Administrative Entities.....4
 - 4. The appointment and proceedings of the Board.....4
 - 5. The appointment and proceedings of the Committee6
 - 6. Establishment and operation of the Project Implementation Unit8
 - 7. Disclosure of interests.....9
 - 8. Immunity10
- Part III Creation and operation of the UAF.....10
 - 9. Opening and operating the account.....10
 - 10. Sources of funds for UAF and the budget11
- Part IV Subsidies.....13
 - 11. Programs eligible for subsidies from UAF13
 - 12. Process for awarding subsidies13
- Part V Reporting.....14
 - 13. Reporting by the Board and the Committee14
 - 14. Transparency and accountability.....15
- Schedule 1: Indicative list of projects amenable to UAF funding.....15

Part I Introduction

1. Preamble

These Regulations have been developed by the Liberia Telecommunications Authority (“LTA”) pursuant to the National Universal Access Policy Strategy, 2014 (“NUAPS”), the National ICT and Telecommunications Policy, 2011, (“ICT Policy”), and sections 22 and 23 of the Telecommunications Act of 2007 of the Republic of Liberia (“Act”).

These Regulations may be cited as the Regulations on the Universal Access Fund (Creation, Management and Deployment), 2014.

2 Purpose and Scope of these Regulations

These Regulations address the establishment of the Universal Access Governing Board (“Board”), the Universal Access Implementation Committee (“Committee”) and the Project Implementation Unit (“PIU”) as envisaged in the NUAPS. The Regulations define the roles of each of the Board and the Committee; provide for the establishment of a bank account with a registered and recognised bank in Liberia to receive and disburse funds in accordance with these Regulations to be known as the Universal Access Fund (“UAF”); identify sources of funds for the UAF; determine the criteria for projects that may qualify for funding from UAF; establish the procedures for applications and disbursements for funding those projects; deal with the auditing of the UAF and related matters; and provide for reporting obligations by the Committee and the Board, and liaise with the Ministry of Finance and the Ministry of Posts and Telecommunications (“the Minister”).

3 Objectives of these Regulations

These Regulations have the following objectives:

- (a) To assist in achieving the goals of Universal Access as set out in the Act, the ICT Policy and the NUAPS;
- (b) To collect, deposit to a bank account and to disburse from that account funds received from licensees and other sources;
- (c) To administer funds in the UAF in a transparent, objective and accountable manner;
- (d) To direct the application of funds only towards the achievement of the goals of Universal Access and the costs of administration reasonably associated with these goals; and

- (e) To ensure that the interests of the Government of Liberia, the public, and service providers are taken into account.

Part II Creation of the Administrative Entities

4. The appointment and proceedings of the Board

4.1 Subject to subsection 4.3, the Board shall be established on the appointment by the Minister of eight members, with one member being nominated by each of the following -

- (a) the Ministry of Posts and Telecommunications, which shall act as chair;
- (b) the LTA, which shall act as secretary;
- (c) the Ministry of Finance;
- (d) the Ministry of Internal Affairs;
- (e) the Liberia Chamber of Commerce; and
- (f) three licensed service providers.

4.2 The Minister shall appoint the Board within one month of the coming into effect of these Regulations, failing which the persons nominated by the LTA shall constitute the Board.

4.3 Persons nominated and appointed to the Board shall have good standing, which for purposes of these Regulations means that each of them shall –

- (a) be a person of integrity and good reputation;
- (b) have knowledge of or experience in the ICT/Telecom sector;
- (c) not be an elected official of Government, nor a candidate for an elected office of Government, whether national, local or provincial for the duration of his or her appointment; and
- (d) not have a criminal record, be insolvent or bankrupt, have been dismissed from any position by reason of mismanagement, or be of unsound mind.

4.4 Members of the Board shall hold office –

- (a) for a period of three years and shall be eligible for re-appointment for one further term, but appointments shall be staggered to ensure continuity on the Board.
 - (b) until death, they reach the age of 70 years, they are incapable of doing so, they resign, they fail to attend three consecutive meetings of the Board (without excuse), or they are no longer eligible under section 4.3; or
 - (c) unless they are requested to leave office by a unanimous decision of the other members, for failing to carry out the mandate or frustrating the mandate of the Board, or by reason of any criminal conviction whether in connection with their membership of the Board or not, or in terms of section 7.2.
- 4.5 A vacancy on the Board shall be filled as soon as possible and in any event, within forty five days of the vacancy arising, by nomination and appointment in terms of this section 4 with the necessary changes to reflect that the appointment is the filling of a vacancy and not an initial appointment, and specifically to address the category of +vacancy.
- 4.6 The Board shall meet as often as required to conduct the business of the Board as set out in these Regulations, and no less than four times per year, provided that the Board shall meet within a maximum of 15 days in response to a formal request from the Committee, . A meeting of the Board shall be convened by the Chairperson, and notice of the meeting shall be provided to each member.
- 4.7 Meetings of the Board shall be held at such times and in such places as the Chairperson reasonably decides and may be held by teleconference or video conference or by any other means that enables all parties to communicate with one another at the same time..
- 4.8 The Board shall keep written minutes of all meetings which shall be made available to any party on request.
- 4.9 At Board meetings –
- (a) the Chairperson shall preside at all meetings unless s/he is absent, in which case s/he shall designate a proxy Chairperson for that meeting; and in the absence of such designation, the members present shall elect a proxy Chairperson for that meeting and the proxy Chairperson shall decide the procedure for the meeting;
 - (b) a quorum shall be constituted if five members are present; and

- (c) all members are entitled to vote at meetings and matters arising shall be decided by a majority of votes, provided that in the case of a tie the Chairperson shall have a casting or additional vote.

4.10 The Board's functions shall include to –

- (a) establish the high level vision and agenda for achieving the provision of Universal Access in Liberia;
- (b) review and approve the Universal Access Budget and Implementation Plan submitted annually by the Committee;
- (c) submit the annual budget and disbursement plan for the Universal Access program to the Minister of Finance for inclusion in the annual budget of the Executive for approval by the National Legislature;

and

- (d) review and approve the Monitoring and Evaluation Report submitted quarterly by the Committee.

5. The appointment and proceedings of the Committee

5.1 Within one month of the establishment of the Board, the Board shall appoint the Committee which shall consist in no more than seven members.

5.2 The Chairperson of the Committee shall at all times be a member of the Board of Commissioners of the LTA (BoC).

5.3 The Committee members shall be constituted as follows:

- (a) one other member of the BoC shall be a member of the Committee;
- (b) at least three members shall be nominated by licensed service providers; and, where feasible, should not be the same entities represented on the Board;
- (c) at least one member shall be nominated by an organization that represents telecommunication users or the interests of civil society in Liberia; and

5.4 Each member of the Committee shall hold office for two years, which term may be renewed no more than twice.

- 5.5 The same criteria shall apply to the qualifications and good standing of Committee members as are set out in sections 4.3, 4.4 and 4.5, except as indicated in sections 5.3 and 5.4.
- 5.6 The Committee shall perform its functions and duties as set out in these Regulations in addition to any matters reasonably delegated to it by the Board, and may appoint such staff as it may reasonably require to assist in carrying out the work of the Committee.
- 5.7 The Committee shall meet as often as required to conduct its business as set out in these Regulations, and no less than six times per year. After due consultation with the Chairperson of the Committee, a meeting of the Committee may be convened by any member and notice of the meeting shall be provided to each member by the member who wishes to convene the meeting.
- 5.8 Except as provided for in section 5.7, meetings of the Committee shall be held at such times and in such places as the Chairperson decides and may be held by teleconference or video conference or by any other means that enables all parties to communicate with one another at the same time.
- 5.9 The Committee shall keep written minutes of all meetings which shall be made available to any person on request, provided that the cost associated with reproducing said minutes is borne by the requester.
- 5.10 At Committee meetings –
- (a) the Chairperson shall preside at all meetings unless s/he is absent, in which case s/he shall designate a proxy Chairperson for that meeting; and in the absence of such designation, the members present shall elect a proxy Chairperson for that meeting and the proxy Chairperson shall decide the procedure for the meeting;
 - (b) a quorum shall be constituted if at least 50% of the members are present; and
 - (c) all members are entitled to vote at meetings and matters arising shall be decided by a majority of votes, provided that in the case of a tie the Chairperson shall have a casting or additional vote.
- 5.11 The Committee shall appoint a Project Implementation Unit (“PIU”) to implement or monitor approved projects to achieve the goals of Universal Access. The Committee

shall remain responsible for the actions and omissions of any person, expert or other entity to whom those powers and functions have been delegated.

- 5.12 Annually the Committee shall submit to the Board the Universal Access Budget Implementation and Disbursement Plan (“Budget”), setting forth –
- (a) the prioritized Universal Access projects for the year;
 - (b) a detailed description of planned activities for the year;
 - (c) the sources and uses of funds, including a schedule of proposed disbursements; and
 - (d) the manner in which the PIU will complete the execution of the UA projects and activities, budgets, expected start and completion date, outputs, and monitoring indicators to track progress of each project.
- 5.13 The Committee shall, with the assistance of the PIU, submit to the Board in writing a Monitoring and Evaluation Report at least once per quarter on –
- (a) the establishment of and progress made and/or impediments encountered in relation to any project to achieve Universal Access goals;
 - (b) the receipt and disbursement of funds from the UAF;
 - (c) any delegation of its powers; and
 - (d) progress against the Budget.

6. Establishment and operation of the Project Implementation Unit

- 6.1 The PIU shall be established as an independent unit within LTA responsible, as directed by the Committee, for the management and implementation of the tasks required to implement the NUAPS.
- 6.2 The PIU will be headed by a Project Coordinator appointed by the Committee. Other suitably qualified staff may be appointed to or removed from the PIU by the Committee as required. Removal of a member from the PIU may take place on the basis that a member of the PIU has not carried out the terms of an assignment under this Regulation in relation to the UA program to the Committee’s reasonable satisfaction, or has failed to

disclose an interest in terms of section 7. Appointment of a member of the PIU shall be on such terms and for such period as may be decided by the Committee.

6.3 The PIU shall ensure effective and flexible coordination, management and day to day implementation of the UA program, including preparation of annual work-plans and budgets, procurement, payments, monitoring, reporting and evaluation. Its functions shall specifically include -

- (a) administration and management of all projects supported by the UAF;
- (b) management of the procurement process for UA projects;
- (c) preparation of project plans for UA projects; and
- (d) preparation of reports on project outcomes against performance indicators or targets defined in the project plans.

6.4 Annually, on a date to be specified by the Committee (preferably no later than December 31) the PIU shall submit a draft Budget to the Committee in a standard format as required and approved by the Committee.

6.5 Quarterly the PIU shall prepare and submit to the Committee a Monitoring and Evaluation Report, setting forth in a standard format as required and approved by the Committee, progress against plan for each UA project and identifying any corrective actions required for implementation.

7. Disclosure of interests

7.1 A member of the Board or Committee as the case may be, shall disclose any direct or indirect financial interest to the other members of the Board or Committee that he or she may acquire in any service provider or licensee, or in any matter that is before or that will come before the Board or Committee as the case may be, for consideration, and a member of the PIU shall similarly disclose to the Committee any direct or indirect financial interest that he or she may acquire in any service provider or licensee, or in any matter that is before or that will come before the PIU for implementation; provided that section 7.2 shall not apply in the case where the interest of the member is limited to the supply of goods and services to the public on the same terms and conditions.

7.2 The Board or Committee as the case may be, shall determine whether or not that member shall remove him or herself from any meetings concerning that matter, or from the Board, or Committee, or what other steps shall be taken in relation to that member in consequence of that disclosure. In any event, the vote of that member shall be disregarded in any meeting and for the purpose of constituting a quorum.

7.3 The disclosure shall be minuted.

8. Immunity

Members of the Board, the Committee and the PIU shall not be personally liable for any act or omission executed in good faith in the performance of a function or power under these Regulations.

Part III Creation and operation of the UAF

9 Opening and operating the account

9.1 The Chairperson of the Committee shall cause a bank account to be opened in the form of an escrow account, with a registered and recognised bank in Liberia, on the terms and conditions that usually apply to such an account, within one month of the appointment of the Committee. The bank account shall be called the “Universal Access Fund”.

9.2 Any transactions to be performed on the UAF shall require the signatures of the Chairperson of the Board and the Chairperson of the Committee. One alternate signatory for each Chairperson shall be appointed for this purpose at a duly constituted meeting of each of the Board and the Committee.

9.3 The Chairperson shall report to the Committee at the next meeting of the Committee on the establishment of the bank account. The Committee shall likewise report to the Board at the next meeting of the Board.

9.4 Funds must be deposited to the UAF in accordance with the requirements of the bank at which the account is held and –

- (a) notification of all payments and transfers to the UAF shall be copied to the Chairperson of the Committee;

- (b) monies may be paid out of the UAF only if all of the following requirements are met:
 - (i) funding is appropriated in the annual Budget; ; and
 - (ii) payment is authorized by the authorized signatories; and
 - (iii) payment will not cause the UAF to have a negative balance following the payment.

9.5 Any surplus in the UAF after allowing for budgeted items in any one year shall be retained as a reserve for the purpose of fulfilling Universal Access goals in future years.

9.6 The Board shall appoint a firm of independent auditors to audit and provide a set of audited financial statements in relation to the UAF on the principles established in the law, and on an annual basis to the Minister who shall provide the financial statements to the Minister of Finance.

10. Sources of funds for UAF and the budget

10.1 Subject to the ICT Policy and the NUAPS and in terms of section 11 of the Act, the LTA shall impose licence conditions on service providers and licensees that are not more burdensome than necessary for the Universal Access goals to be achieved. Such licence conditions may include the obligation to make payment of a contribution to the UAF in accordance with the ICT Policy.

10.2 Licensees and service providers designated by LTA shall pay 2% of annual gross revenues each year for the first three-year period of the operation of the UAF. The LTA may revise these contributions in terms of section 10.3. Contributions by licensees shall be made directly to the UAF no less frequently than annually, within three months of the date of the financial year end, and on the basis of the relevant entity's audited financial statements, with proof of payment being furnished to the LTA at the same time. The LTA may charge interest on any late payment at the maximum rate permissible by law.

10.3 The determination of the level of contributions to UAF shall be determined by the need to facilitate the provision of services to un-served and under-served areas in Liberia. The Board shall determine the meaning of "un-served" and "under-served" from time to time and the Committee shall make a recommendation to the LTA regarding the level of contributions needed having regard to these determinations.

- 10.4 In addition to the contributions made by licensees and service providers, the Committee may receipt funds from donations to the UAF, allocations from the national budget that may include the County Development Fund and the Social Development Fund, or from any Ministry of Government for the purpose of achieving Universal Access, and any other legitimate source.
- 10.5 The Committee shall, in consultation with the Board and having regard to the provisions of NUAPS and the provisions of section 11 –
- (a) determine a draft list of priority programs for the first three years of the operation of the UAF (the “three-year period”), and publish this list for public comment;
 - (b) in determining priority programs, take into account the implementation schedule, areas to be covered, and cost of implementation; and
 - (c) taking account of comments received, determine a final list of priority programs.
- 10.6 The Committee shall, in consultation with the Board, review the priority list of programs no less frequently than the second year of each three-year planning period, and follow the procedure set out in section 10.5.
- 10.7 The Committee shall, subject to the approval of the Board, determine the Budget for the three-year period, and thereafter adjust the Budget each year, and then it shall determine the Budget for the following three-year period, and so on.
- 10.8 The Budget shall include a forecast of the costs reasonably and necessarily associated with the due and proper administration of the Board and the Committee (including the PIU), which shall be covered by the UAF.
- 10.9 The Budget shall also include the identity of likely sources and amounts of funds to be receipted by the UAF.
- 10.10 The Budget shall be approved on an annual basis by the National Legislature as part of the National Budget approval process.

Part IV Subsidies

11. Programs eligible for subsidies from UAF

11.1 Programs that have as their object the provision of service in un-served and under-served areas or the provision of services to disadvantaged groups shall be eligible for a subsidy from the UAF, and the Committee shall make recommendations to the Board regarding the approval of these programs.

11.2 No program shall be approved by the Board unless it is –

- (a) specific, measurable, achievable, relevant and time-bound, having regard to the targets and scope of services set out in NUAPS;
- (b) supported by a budget that includes a detailed work plan, project milestones, evaluation criteria and payment criteria;
- (c) fits within the approved annual budget for the UAF;
- (d) considered to be self-sustainable if it were to be awarded a subsidy;
- (e) technically feasible;
- (f) not already addressed by another project whether as part of the UAF or not.

11.3 Approved projects that are created within each program shall be awarded only on the basis of open, competitive bidding processes which are compliant with the requirements of the Public Procurement and Concessions Act (PPC Act) and Regulations issued by the PPC Commission, provided that no project shall exceed the three-year period of each budget.

11.4 An indicative list of projects that may be considered by the Committee is attached to the Regulation as *Schedule 1*.

12. Process for awarding subsidies

12.1 The Committee shall award subsidies pursuant to a competitive bidding process as required by the PPC Act, and may delegate any of these tasks as it may determine in its discretion, to the PIU –

- (a) prepare an initial report on the project which stipulates the scope of work and timetable for the project and whether the project will be subsidized in full or only in part and the terms on which part-subsidies may be awarded;
- (b) prepare and publish a detailed specification, qualification criteria, terms of reference, a tender document (request for proposal), and detailed and objective evaluation criteria in relation to each project which may include proof of financial capacity and technical expertise for the proposed project, and an assessment of whether or not the project offers value for money;
- (c) receive and assess bids and award the contract, and negotiate and finalise the contract terms which shall include terms relating to contract management, reporting and dispute resolution;
- (d) monitor the progress of the project against the contract deliverables, request and collect information from the successful bidder for this purpose, and where necessary, take corrective action to ensure the project is completed on time and in accordance with its terms and where this is not possible, to terminate the contract and make alternative arrangements for its completion by issuing a further tender;
- (e) issue completion notices for each completed milestone or deliverable; and
- (f) pay approved invoices from the UAF on the basis set out in these Regulations.

12.2 Projects may be resubmitted to the Committee for consideration from time to time unless the Board has issued a final rejection notice in relation to that project or a successful bidder has failed to complete a project and the contract appointing that bidder has been terminated in accordance with section 12.1 (d).

Part V Reporting

13 Reporting by the Board and the Committee

13.1 The Committee shall provide a report on the progress made on each project on at least a quarterly basis to the Board and a report on progress on achieving the goals of Universal Access set for that year, on an annual basis.

13.2 The Board shall report against the annual goals in its annual report to the President, along with the audited financial statements of the UAF.

14 Transparency and accountability

14.1 In addition to the other provisions of this Regulation, the Committee shall, in consultation with the Board and within six months of the date of commencement of this Regulation, establish a website that contains information that can be easily accessed describing –

- (a) the roles of each of the Board and the Committee; and
- (b) the goals of the NUAPS.

14.2 The website shall be regularly updated and shall contain details of –

- (a) the Board definition of “un-served” and “under-served”;
- (b) the programs that the Committee considers to be priority programs, for consultation;
- (c) all tenders issued by the Committee and the successful bidders and details of each project including the timetable for completion and the area in which the project will be carried out and other relevant information including statistics;
- (d) the relevant provisions of the Act, NUAPS and the ICT Policy, these Regulations, the Committee’s Annual Report and the audited annual financial statements of the UAF; and
- (e) the contact person to whom queries and comments or suggestions about Universal Access and the UAF or any other matter can be addressed.

Schedule 1: Indicative list of projects amenable to UAF funding

1. Projects that enable mobile and/or fixed and/or broadband coverage of un-served and under-served areas
2. The provision of emergency services and/or directory enquiries
3. Projects that facilitate services to schools, libraries, health centres, counties and/or police stations

4. Projects that have as their object the creation of telecentres or community centres in un-served or under-served areas, to which services are provided
5. Projects that enable, facilitate or support the provision of fibre backbone services to un-served or under-served areas
6. Projects that establish solar power or renewable energy sources for licensees or service providers
7. Projects that create training and employment opportunities within the ICT sector, and other forms of capacity building and digital literacy
8. Projects that enable or facilitate the deployment of public payphones in un-served or under-served areas, whether as part of another project or not
9. Projects that create content for provision over established infrastructure that promotes education, health and government services or Liberia-specific content
10. Projects that introduce, support or distribute devices at an affordable price that are capable of being used for broadband services or by the disabled specifically
11. Projects that facilitate the establishment of wifi hotspots in urban areas, for government hubs and/or for educational institutions
12. The establishment of co-location points or data centres, or connectivity at the last mile
13. Projects that support the provision of telecommunications services in response to national or regional emergencies or natural disasters.

*Please send all comments or suggestions on these Draft Regulations in writing for review to the below-mentioned email addresses **on or before May 19, 2014**:*

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