



20 August 2015

**Independent Communications Authority of South Africa**

**Attention:** Mr Godfree Maulana

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Dear Sir

**WAPA RESPONSES TO THE INFORMAL QUESTIONNAIRE ON USOs**

1. WAPA thanks the Authority for the opportunity to comment on issues related to universal service obligations (USOs) and trusts that the below will be of assistance.
2. At the outset WAPA wishes to state that the questions raised reveal a welcome fresh and creative new approach to USOs, something which is greatly required.
3. WAPA requests that the Authority notes that the responses below are intended to be of an informal nature and are not based on a full and proper consultation with WAPA's membership. As such WAPA reserves the right to make additional submissions during any ensuing process.

**OPENING REMARKS**

4. Before addressing the questions directly, WAPA wishes to make some preliminary observations.

**General vs Specific USOs**

5. Certain of the questions posed imply that there are currently licensees not subject to USOs. This, however, ignores the levying of contributions to the USAF under the USAF Contribution Regulations 2012 which is applicable to all licensees. It further ignores the e-Rate obligation set out in section 73 of the ECA which is in essence a USO. Both of these should be regarded as USOs of general application which are binding on all licensees through section 5(12) of the ECA and the various sets of Standard Terms and Conditions Regulations.
6. Specific USOs relating to, for example, connecting households or schools, have only been imposed on licensees as a quid pro quo for a grant of exclusivity or the granting of a radio frequency spectrum licence. These USOs are specific in the sense that:
  - 6.1. They are designed with a particular licensee or class of licensees in mind; and
  - 6.2. They are imposed as part of the fee for an assignment of radio frequency spectrum or an extended period of exclusivity.

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7. Care should therefore be taken not to equate the specific USOs imposed on incumbent operators prior to the licence conversion process with the general USOs imposed on all licensees both prior to and subsequent to licence conversion.
8. Further, Section C of the questionnaire raises questions relating to the different categories of licensees and the different size of licensees and whether these should be relevant factors in imposing USOs. What it does not explicitly recognise is the wide variety of services provided by licensees, from satellite networks to voice services, mobile to fixed, access networks to backhaul networks, etc.
9. This raises the challenge of ensuring that USOs are relevant to the licensee on which they are imposed and that they are capable of being observed by that licensee. For example:
  - 9.1. Many – but not all – of WAPA's members would seek specific USOs relating to roll-out of their WISP networks in under-serviced areas in which they are already present or adjacent to. These obligations would (a) require further differentiation based on other factors such as the size and location of the member and (b) be thoroughly inappropriate for an ISP without its own electronic communications network.
  - 9.2. A USO based on discounted Internet access to needy persons would be inappropriate for a provider of voice services or a satellite services provider.
10. The nature of a proposed USO should also cater for any wholesale relationships impacted upon and where the burden of the obligation can be shared. The e-Rate is an example of such a USO: the provider of the retail service to a qualifying institution is entitled under section 73 to recover the discount provided from an upstream provider or providers. The absence of a mechanism to regulate this wholesale relationship has led to the continued failure of the e-Rate obligation.

#### **The targets are in the wrong place**

11. WAPA submits there is a need to reconceptualise USOs in the sense that set targets for, e.g. connecting schools or clinics, should attach to the USAF and not to individual licensees.
12. Stated differently: specific USOs should be set with regard to the USAF, which then has a set of targets – co-ordinated under SA Connect – which the managers of the USAF are required to meet through disbursement of funds. Specific USOs with bald targets should not be imposed on licensees as has been done in the past.
13. Such an approach assists in dealing with the “state of readiness” issues raised below, e.g. whether a targeted school or clinic ready to receive the broadband service to be provided.

#### **ICT Policy Review Final Recommendations**

14. WAPA believes that the proposed RIA should take cognisance of the relevant recommendations of the ICT Policy Review relating to universal service and access. We have set these out as an annexure to our response for ease of reference.
15. Recommendation R37 is directly relevant:

### R37. UNIVERSAL SERVICE OBLIGATIONS (USOS)

*The Panel notes that*

- *The SA Connect broadband policy underscores the problem with the state of USOs in South Africa, commenting on the “failure to enforce USOs” and reflecting the considerable public debate on their effectiveness, appropriateness and continued relevance.*
- *The Panel agrees that the USO framework in South Africa has been weak, and that the enforcement thereof has not resulted in the desired outcomes.*

*The Panel therefore recommends that:*

- a) An improved USO framework must be developed so that obligations are clearly defined, robust, proportionate to market share, capable of satisfaction and enforceable.*
- b) A revised policy would include provisions specific to, inter-alia:*
  - i. The alignment with determinations on universal access, universal service, underserved areas and other relevant definitions to be kept relevant through periodic review.*
  - ii. Achieving UAS in respect of broadband.*
  - iii. A “pay or play” principle to be introduced which includes explicit criteria for the translation of obligations into an equivalent monetary contribution (i.e. equitable contributions).*
  - iv. A requirement for a dedicated periodic consultation process with stakeholders to consider issues, including appropriate target levels of service or access, a timeline for reaching such targets, the level of service to be provided, mechanisms for monitoring and enforcement.*
  - v. Periodic reporting requirements for operators in respect of targets achieved and compliance on the part of licensees with their USOs.*
- c) A revised USO framework shall incorporate provisions for making broadband Internet access available at public venues through the use of wireless technologies such as Wi-Fi, with a focus on under-served and rural areas. The obligations in this regard shall be aligned to the policy provisions in the SA Connect national broadband policy.*

16. WAPA is in broad agreement with these recommendations.

17. WAPA has also noted the recommendations made in respect of the dissolution of USAASA and the creation of an ICT Development Fund. Remedial action to address shortcomings in the manner in which USAF contributions are managed, particularly the lack of transparency in how funds contributed are spent, would address a major complaint held by almost all licensees.

### **Carrots vs Sticks**

18. It is noteworthy that investigations previously undertaken by the Authority regarding levels of compliance with specific USOs revealed that USO targets which created a degree of incentive towards compliance were reached and even exceeded while those without any incentive were

not. The USO relating to community-service telephones is an example of a USO with a built-in incentive.

19. WAPA submits that – as a principle of designing USOs – incorporating an incentive towards compliance rather than a bald obligation is sound strategy for obtaining compliance with an minimum of enforcement.
20. In this regard public-private partnerships (PPPs) have proven to be very successful ways of incentivising compliance with USOs. Examples include the PPP's between Tshwane and Project Isizwe, City of Cape Town initiatives and CSIR Meraka initiatives.
21. Further and as provided for in the ECA, the Authority should not preclude enabling specific actions by licensees to achieve objectives on a voluntary basis (perhaps incentivised by tax breaks or such) as an alternative to mandated USOs.

#### **USOs have a competitive aspect**

22. WAPA is particularly concerned that the Authority – in designing a USO framework – does not ignore the potential competitive impact of USOs imposed. This occurs where a large operator is obliged and incentivised to deploy networks in an area in which a WAPA member is currently operating, leading to unnecessary infrastructure duplication and the crowding out of competition.
23. When designing USOs, WAPA submits that the Authority should further consider:
  - 23.1. Imposing USOs in respect of wholesale relationships and not only retail / consumer-facing relationship. An obligation to offer open-access services in an under-serviced area is preferable to an obligation to build a new network in that area as it avoids unnecessary entrenched costs and infrastructure while promoting price competition at the service layer.
  - 23.2. The only successful USO imposed to date related to a wholesale rate, being the Community Service Telephone termination rate.
  - 23.3. USOs can also relate to obligations to share infrastructure or undertake joint network deployments in economically-marginal areas.
  - 23.4. A USO could incentivise a larger operator to achieve compliance with its obligations by partnering with the regional SMME licensees. There is already a successful precedent for this in the relationship between Neotel and certain WAPA members for the reciprocal provision of ECNS.
    - 23.4.1. The WAPA member owns and operates a local access network which has direct links to its subscribers and then a backhaul link to other networks, including the Internet. The WAPA member agrees to carry Neotel's traffic over its local access network to Neotel's subscribers in that area.
    - 23.4.2. Neotel operates a national network with international links and provides the backhaul link which connects the WAPA member's network to other local, national and international networks.

- 23.4.3. Neotel benefits from this arrangement by effectively expanding its service footprint without investing in deploying its own electronic communications network in the kind of economically-marginal area that many WAPA members specialise in operating in.
- 23.4.4. The WAPA member benefits from receiving very competitively-priced backhaul services.
- 23.4.5. Consumers in the area in which services are being provided benefit from better quality of service and greater services competition in the area.

### **Co-ordination**

- 24. The questions raised link the imposition of USOs on licensees by ICASA with attainment of the goals set out in South Africa Connect. This approach is also evident from the Authority's proposed conditions to its approval of the transfer of control applications made by Neotel in respect of its acquisition by Vodacom, and it makes sense.
- 25. As set out in recommendation 37 above, there is an urgent need for greater co-ordination between different bodies and processes in attaining universal service and access goals. Constructively linking USOs with SA Connect requires insight which industry does not have into how SA Connect is being implemented. The same applies to other initiatives, such as SIP15 in respect of broadband infrastructure and the Dinaledi Schools project and various other initiatives relating to schools connectivity.
  - 25.1. If a WAPA member provides services in one of the areas in which SA Connect is to be rolled out first, can an obligation be placed on it to connect schools when schools connectivity plans are incorporated in the SA Connect roll-out?
  - 25.2. Technical and commercial feasibility to deliver connectivity to schools and other government offices must also not be ignored. For example, in KZN it is extremely difficult to deploy reliable, robust and cost effective connectivity. For large scale projects like connecting schools, the majority of rural schools and clinics are best connected by satellite technology.
  - 25.3. The actual broadband connection is not the only problem in connecting schools. When the Authority reviews the state of connectivity to schools, they must also consider demand-side challenges such as the availability of basic infrastructure such as electricity, as well as security, the availability of computers and computer literacy. USOs should be mindful that funds not be wasted by enforcing connectivity to schools where the connectivity cannot be used by the school.

### **Enforcement**

- 26. It is also the case that the Authority has struggled to enforce existing USOs, with the result that many of the specific USOs imposed on licensees have not been met. Notwithstanding the simplicity thereof, this has even extended to the enforcement of the USAF Contribution Regulations.

27. Any assessment of the regulatory impact of USOs and any consideration of the type and form of USOs to be imposed must take into account the enforcement constraints experienced by the Authority.

#### **A. LEGISLATIVE AND REGULATORY CONSIDERATION**

- (1) *In terms of section 8 of the ECA the Authority must prescribe standard terms and conditions to be applied to individual and class licences, which include but not limited to “any universal access and universal service obligations”. Given that most Individual and Class licences were a result of licence conversion done on the basis of no less favourable terms. **In your opinion is it then justified that the Authority impose USAO’s after the fact?***
28. While this is predominantly a technical legal issue, it is fair to say that the changing dynamics of the industry and the universal service challenge in South Africa should not be inflexibly linked to a USO regime designed in the 1990s and 2000s.
29. This view is reinforced by the fact that the outcomes of the licence conversion process were in no way anticipated at the time that the ECA was drafted and implemented. The number and variety of licensees active in the market and the changing nature of the services they provide call for a flexible and general regime.
- (2) *If USAO’s are imposed on licence holders in terms of the section 10 of the ECA the Authority must consult with licensees. The ECS/ECNS sector has over 600 licence holders in the market, consulting with each licence holder would entail a timeline of not less than two years to complete the process. **Should the Authority consult industry as a collective or should the Authority consult on licensee basis?***
30. An individual approach does not seem feasible and consultation should be done on an industry basis. Licensees are in any event able to respond individually to a draft regulation or amendment to regulations published in respect of USOs.
31. The imposition of specific USOs across licensees is not supported by WAPA as it would be impractical and impossible to enforce.
- (3) *Once the USAO is imposed each licence must be amended, in terms of section 10 of the ECA the provisions of section 9(2) to (6) apply. Given that the imposed USAO’s could be the same, **Should the Authority follow the provision of section 9(2) to (6) of publishing each licence amendment per licence or should the publication only be for the USAO to be imposed on all licence holders?***
32. Historically only specific USOs have been recorded on the actual licence document. A practical approach would appear to be record USOs as a separate regulation of general application or to achieve the same effect through an amendment to the various Standard Terms and Conditions Regulations.
33. The imposition of specific USOs across licensees is not, in any event, supported.

## B. UNIVERSAL SERVICE AND ACCESS

(1) *The Broadband policy objectives are but not limited to, affordable broadband, e-government services, and broadband to communities. Which aspect of the stated should the USAO focus on?*

34. USOs of general application, such as the current USAF contribution, allow the application of these funds to the priorities recognised by those responsible for the implementation of SA Connect.

35. USOs relating to the provision of e-government services seem inappropriate, certainly for those providing ECNS and for most other non-government licensees. Objectives relating to affordable broadband seem better placed under the cost-to-communicate programme and will in most instances require completion of a market investigation under Chapter 10 of the ECA. Broadband to communities could form the subject of USOs but this would be best done on an incentivised basis as discussed above.

(2) *Currently the Authority has imposed USAO's to licensees for the roll-out of internet connectivity to schools with a target number of 5250 to connect. South Africa has a total of approximately 24 000 public schools. Given that not all the schools will benefit from the current process, should the Authority imposed the same obligation to other licence holders, how many schools per licensee and how should the obligation be structured?*

36. As set out in the Opening Remarks, USOs imposed for the roll-out of Internet connectivity to schools were all imposed as a result of awards of spectrum to licensees such as Vodacom, MTN and WBS. In other words such USOs were:

36.1. Imposed on radio frequency spectrum licences, not service licences

36.2. Imposed as part of the fee for the radio frequency spectrum assigned to the licensee.

37. WAPA does not support the expansion of specific USOs of this nature to all service licensees and does not believe this can be practically achieved.

(3) *The Broadband policy started in B (1) has targets for broadband roll-out to schools, public health facilities and government facilities. Should the Authority be limited to imposing USAO towards achieving this set target or is there any other areas the Authority can look at to advance the same objectives?*

38. Targets should not be limiting and there is any event a broad range of activity required to work towards those targets.

(4) *What other areas should the Authority look at in imposing USAO to increase access and service delivery to under-served and under-serviced communities?*

39. USOs as an intervention must also be rooted within the context of other programmes of the Authority, the DTSP and other stakeholders, such as reducing the cost to communicate and the assignment of high-demand spectrum.

### C. MARKET STRUCTURE CONSIDERATION

*(1) The South African market consist of Individual, Class licence holders and Resellers. **Should USAO be imposed evenly across the stated? Provide reasons.***

40. General USOs can be imposed evenly across individual and class licensees. Turnover-based measures such as the USAF contribution are useful in that they take into account the size of the licensee.

41. We do not support any USOs being imposed on licence-exempt resellers. It is difficult to conceive of a non-pricing USO which could be imposed on these entities and a general USO such as a USAF contribution should not be imposed as this contribution has already been collected from the upstream licensee(s). The Authority needs to be clear that introducing increases to the USAF contribution or expanding its ambit of operation will have a direct adverse impact on the cost to communicate, i.e. there is a balancing exercise which must be undertaken.

*(2) Given that Individual licences can operate at a national scale and class licences are restricted to a geographic scale. **How best should the Authority impose USAO? Explain why?***

42. A licensee can only implement USOs in an area in which it is authorised to operate.

43. Turnover-based measures such as the USAF contribution are useful in that they take into account the size of the licensee.

*(3) It is common knowledge that entities in the market are of different size based on market size, product offering in market, revenues size and many other factors. **How should the Authority cater for the differences in imposing USAO's and why?***

44. The diversity of entities in the market supports the imposition of general USOs and militates against the imposition of specific USOs.

45. A "one-size-fits-all" obligation which is not service-neutral and which does not take into account the level of revenue generated through licensed activity is neither possible nor desirable.

*(4) **What other consideration should the Authority consider in imposing USAO's and how should that be done?***

46. These have been covered in the Opening Remarks.

Regards

WAPA Regulatory Advisors



## **ANNEXURE - RECOMMENDATIONS OF THE ICT POLICY REVIEW PANEL REGARDING UNIVERSAL SERVICE AND ACCESS**

### **R34. UNIVERSAL SERVICE AND ACCESS DEFINITIONS**

The Panel notes that

- Universal access and service has conventionally been framed on three critical pillars of availability, affordability and accessibility;
- Together these pillars have, to date, provided guidance for policy formulation and regulatory and programmatic intervention aimed at achieving universal access and service.
- However, international experience indicates that these are not sufficient to achieve the concomitant goals of adoption and effective use of ICTs, which is a requisite for social and economic development outcomes.

The Panel therefore recommends that:

- a) The current definitions must be expanded beyond the constructs of availability, affordability and accessibility.
- b) In particular, the definitions should be extended such that they align with the additional pillars of UAS which the ITU has identified.
- c) The definitions must thus be evolved such that the following pillars are encompassed:
  - i. Availability – network coverage of the inhabited geographic territory;
  - ii. Affordability – ability of users to pay for access to infrastructure and services, including access to devices and networks, cost of service and consumption (e.g. calls, data, content), with targets often set as a percentage of family income;
  - iii. Accessibility – ability of all inhabitants to use the service concerned (regardless of location, gender; race, disability).
  - iv. Awareness - citizens need to be properly informed of the existence of available infrastructure and services, and of their potential benefits;
  - v. Ability - users need to possess the necessary skills to take advantage of the infrastructure and services, such as literacy, language fluency, and ability to use a computer and navigate the Internet.
- d) This definition set must also include additional definitions for Persons with Disabilities (Recommendation R.35).

### **R35. RESPONSIBILITIES FOR DEVELOPING AND REVIEWING UAS DEFINITIONS**

The Panel notes that:

- In the current dispensation, the EC Act splits responsibilities for definitions between USAASA, the Minister and ICASA;

- It has been argued that splitting of responsibilities has had the effect of non-synchronisation;
- Although definitions of Universal Service and Access and Underserved areas were gazetted in 2010, definitions of needy persons have not yet been published;
- UAS definitions have not been subjected to regular review.

The Panel thus recommends that:

- a) The responsibilities for developing all UAS related definitions be consolidated and government as the policy maker (currently DTPS) take responsibility for this. These definitions should be regularly reviewed by Government and policy should determine the periods between such reviews.
- b) The regulator will be responsible for implementing policy in line with the definitions and will conduct regular reviews to determine which areas/communities continue to be under-served. Policy and law should determine how often such reviews should take place.
- c) The maximum period between review of definitions and the maximum period between the publishing of under-served areas must be defined in policy.

*MINORITY RECOMMENDATION: UAS should be defined by the entity that will be responsible for enforcing them, viz. ICASA, in order to ensure regulatory consistency. This would need to be done via a consultative process that will include the policymaker along with all other stakeholders.*

### R36. DEFINITIONS REGARDING “NEEDY PERSONS” AND PERSONS WITH DISABILITIES

The Panel notes that:

- Section 88(1) of the EC Act provides that money in the USAF may be used for the payment of subsidies, for, amongst other things, “the assistance of needy persons towards the cost of the provision to, or the use by, them of broadcasting and electronic communications services”.
- The term “Needy persons” is outdated, and has caused a degree of consternation amongst various organisations and individuals;
- While the current definitions for universal service and access refer to “all persons”, it is implied that persons with disability are encompassed.
- The definition for universal service for broadcasting, however, does specify persons with disabilities as indicated above.

It is therefore recommended that:

- a) With regards to persons with disabilities:
  - i. Uniform definitions for persons with disabilities must be incorporated within all UAS definitions across government;
  - ii. The definition for “persons with disabilities” in the UN Convention on the Rights of Persons with Disabilities should be used as a basis for the South Africa definition i.e.

*“those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.*

b) With regards to the current use of the term “needy persons”:

- i. The term “needy persons” to be removed from all law and policy and replaced with “fund beneficiaries”.
- ii. Policy must define categories of fund beneficiaries and that categories must be regularly reviewed.

### R37. UNIVERSAL SERVICE OBLIGATIONS (USOS)

The Panel notes that

- The SA Connect broadband policy underscores the problem with the state of USOs in South Africa, commenting on the “failure to enforce USOs” and reflecting the considerable public debate on their effectiveness, appropriateness and continued relevance.
- The Panel agrees that the USO framework in South Africa has been weak, and that the enforcement thereof has not resulted in the desired outcomes.

The Panel therefore recommends that:

- a) An improved USO framework must be developed so that obligations are clearly defined, robust, proportionate to market share, capable of satisfaction and enforceable.
- b) A revised policy would include provisions specific to, inter-alia:
  - i. The alignment with determinations on universal access, universal service, underserved areas and other relevant definitions to be kept relevant through periodic review.
  - ii. Achieving UAS in respect of broadband.
  - iii. A “pay or play” principle to be introduced which includes explicit criteria for the translation of obligations into an equivalent monetary contribution (i.e. equitable contributions).
  - iv. A requirement for a dedicated periodic consultation process with stakeholders to consider issues, including appropriate target levels of service or access, a timeline for reaching such targets, the level of service to be provided, mechanisms for monitoring and enforcement.
  - v. Periodic reporting requirements for operators in respect of targets achieved and compliance on the part of licensees with their USOs.
- c) A revised USO framework shall incorporate provisions for making broadband Internet access available at public venues through the use of wireless technologies such as Wi-Fi, with a focus on under-served and rural areas. The obligations in this regard shall be aligned to the policy provisions in the SA Connect national broadband policy.

### R38. ESTABLISHMENT OF THE ICT DEVELOPMENT FUND (ICT-DF)

The Panel notes that:

- The USAF has been the subject of controversy, and has been widely criticised for failing to disburse funds on any significant scale.
- The USAF has been subject to a wide-ranging critique, including the effectiveness of its application, and that of governance;
- There is currently wide support from stakeholders for the continuation of a fund;
- The National Broadband Policy, SA Connect, highlights that there is a significant funding gap in relation to broadband infrastructure which will require support from government and the private sector if it is to be addressed. It states

*“What is required are new innovative ways that blend private and government funding sources to fund not only infrastructure rollout, but also critical content development and the provision of public services online. Funding models that share investment risk between the public and private sector are emerging across the globe as the burden for funding cannot be carried by government or private sector alone.”*

The Panel recommends that

- a) The mandate and sources of funding of the Fund be reviewed.
- b) The USAF evolves into an ICT Development Fund (ICT-DF) providing support for both infrastructure and demand stimulation projects, in line with proposed definitions for UAS. It should be funded through private sector levies, donor funding and new incremental state funding.
- c) It may no longer be feasible to host a fund with just a single source of income from compulsory contributions from licensed operators.
- d) Properly designed and implemented, and with sufficient internal resources and expert capacity, an evolved universal service fund model has the potential to serve as a central “clearing house” for a variety of funding sources and development projects, to reduce inefficiencies and improve coordination across the spectrum of ICT development and financing initiatives.
- e) An evolved fund must be used as a mechanism also to host income from the private sector, donors, and the state. This fund must expand its focus on, for example:
  - i. Development of infrastructure in underserved areas which remain out of market reach;
  - ii. Ensuring access to a range of converged ICT applications and services to those who cannot afford;
  - iii. Promoting programmes to facilitate the effective use of ICTs, in especially rural areas, and amongst economically poor youth;
  - iv. Providing e-literacy skills to those who cannot afford it;
  - v. Promote the development of local content and applications;
  - vi. Funding to assist public sector adoption of ICT and applications and content for government services, including e-health and e-education.
  - vii. Funding to support small and medium-sized enterprises to use ICT to improve productivity and competitiveness.

viii. Funding small but important players within the ICT value chain.

The Panel therefore proposes:

f) That an ICT Development Fund (ICT-DF) be established

i. A new funding model for ICT infrastructure and demand stimulation projects would be developed. The creation of an ICT-DF would allow for the aggregation of new incremental state funding with private sector funding and donor funding.

ii. This vehicle would allow for the joint investment by the state, the private sector and donors on a scale far beyond that done previously. This fund could be a key instrument to help fund new infrastructure investment.

iii. In addition, the ICT-DF would be used to stimulate demand including local content and applications development, ICT entrepreneurship and research and development.

iv. The terms of the USAF must be amended so that it evolves into an ICT-DF, and provide a foundational funding source for aggregation of all funding sources.

g) That the fund abide by the following principles

i. Alignment with the NDP which states that "In future, the State's role in the ICT sector will be to facilitate competition and private investment and to ensure effective regulation where market failure is apparent. Direct involvement will be limited to interventions needed to ensure universal access, such as the introduction of "smart subsidies" and to help marginalised communities develop the capacity to use ICTs effectively" (NDP: 171).

ii. There is a need thus to ensure that public funds do not simply replace private investment. Public funds must be directed, in the main, to the promotion of universal access and service in underserved areas.

iii. A company or industry sector which receives government support shall not gain an unfair advantage over its competitors. Thus in terms of State Aid the use of the fund shall conform to the generally accepted norms and principles as espoused in international treaties.

iv. Where the fund is used for infrastructure development, an open access regime must be made compulsory, so that the new infrastructure can be used by all service providers on fair and equal terms.

v. Prioritisation of public funding must in the first instance be committed to improvement of e-Government services, improving government business process; schools connectivity of health sites of service; connectivity to improve policing (including community policing) and the delivery of justice.

vi. In instances where the private sector jointly invests with government, a negotiated agreement is required upfront in terms of the rules of application, such that the fund operates on an open, transparent and fair basis.

h) The establishment of the fund should be subject to further investigation, research and due diligence, so that explicit terms of reference is developed which encompasses clear guidelines for the governance, disbursement and utilisation of the fund.

- i) The terms of the fund shall provide for its independence from the national account.

#### R39. INSTITUTIONAL ARRANGEMENTS FOR THE ICT DEVELOPMENT FUND

The Panel considered various options regarding the management of the proposed ICT-DF. This included a split of responsibilities between the regulator, and an independent Fund Managing entity; management entirely by the Regulator; and management entirely by an independent entity.

The Panel recommends that:

- a) Management and control of the ICT Development Fund must be assigned to an independent entity. This would entail evolving the USAF to become a component of a larger ICT-Development Fund. This requires an amendment to current institutional arrangements.

....

- d) Dissolution processes of the current functions of USAASA must be implemented, and the Agency must evolve into an independent ICT-DF management entity as follows:

- i. The Agency as it currently exists should be dissolved and existing functions transferred to ICASA (regulatory functions) and to the DTPS (policy-making functions);

- ii. All non-policy and non-regulatory functions relating to Fund management shall be retained in the new entity.

- e) Governance and Accountability will be paramount. The new entity would be required to publish separate annual audited statements and an annual report, and to commission independent research into the impact of the fund in achieving UAS targets.

- f) The DTPS, in consultation with other stakeholders within and outside of Government, to determine the model of Governance of the ICT-DF, including whether it should be governed by an independent board appointed by the Minister on the recommendation of Parliament and accountable through Parliament to the public.

- g) The new entity will develop, publish, and maintain guidelines on the use and disbursements of the ICT-DF. Clear and unambiguous guidelines would be published providing guidance on the scope of the fund and the procedures to be followed to access the fund. In addition, the guidelines must incorporate specific provisions on transparency so that contributors to the fund have visibility as to how the funds are utilised would be introduced. The guidelines must be aligned with the UAS definitions at all times, so as to ensure proper monitoring and enforcement.

#### R40. ICT DEVELOPMENT FUND CONTRIBUTIONS

The Panel, in noting the expanded scope of the proposed ICT-DF, as well as the substantive Universal access gap which prevails, recommends the following:

- a) There shall be increased discretion in the disbursement of funding. The current relatively stringent legislative circumscription of the disbursement of funds from the USAF would be removed. The new entity managing the ICT-DF would be required to develop criteria and an annual plan for the deployment of monies in the ICT Development fund, preferably through a public stakeholder consultative process, and subject to third party approval by Parliament, or the Minister or ICASA.

b) The proposed scope of the ICT-DF should include funding for broadband deployment and uptake, and thus support infrastructure and services and the creation of demand must be taken into account.

c) Regarding contributions to the fund from Licensees (As per Section 89 of the EC Act), the regulator should continue to set contributions to the Fund, in consultation with the governance structures of the new entity. The regulator has the information needed to invoice for the monies and also can insure that there is a balance between the Fund contributions and the USOs imposed on operators. In addition, the regulator must balance the Fund levy against any other sector specific taxes and fees that it may administer.

d) Government must conduct a study to ascertain the quantum of funding that will be required given that an expanded definition of universal access will have an impact on the areas where funding will be required.

e) Once this is established, the regulator must be directed to commence with an immediate review of fund contributions from licensees, taking in to account the quantum of funding required, with a view to ascertain why the current contributions should not be increased up to the one per cent of turnover currently provided for in the EC Act (Section 89 (a)).

f) As with the MDDA, policy and legislation should ensure that funds collected are deposited directly in to the account of the independent fund management body.

#### R170. DISSOLUTION OF USAASA AND ESTABLISHING A FUND MANAGER

Note: The recommendation presented in this section, must be read together with the recommendations regarding the establishment of the ICT-Development Fund in the Infrastructure and Services Chapter of this report.

The Panel did not divorce the issues concerning the USAF, and that of the Agency. The nature of inputs to the Panel on institutional arrangements was inevitably linked to issues concerning the USAF. The Panel took into consideration that:

- There is a broad consensus among stakeholders that USAASA had been ineffective in achieving its mandate, as outlined in Chapter 14 of the EC Act.
- There is a lack of clarity and overlapping roles between the USAASA, ICASA and the Minister/Department and that these should be resolved.
- There is broad agreement that it is still necessary to have a fund to address universal service and access.

It is therefore recommended that:

a) The Agency as it currently exists should be dissolved and existing functions transferred to ICASA (regulatory functions) or to the DTPS (policy-making functions).

b) All non-policy and non-regulatory functions relating to Fund management shall be retained by the new entity which will manage the ICT-Development Fund.

c) The remaining components of the Agency must evolve into an independent ICT-DF management entity.

d) That the DTSPS undertake a detailed institutional review and establish transformative measures that are required to ensure that the functions being transferred to the new fund management entity has the requisite capacity to manage the proposed ICT-Development Fund.

#### R41. e-RATE

The Panel notes that:

- There has been a range of criticisms since the introduction of the e-rate under a 2001 amendment to the then Telecommunications Act. The 2014 amendments to the EC Act sought to address some of the criticism by ensuring the e-rate is applicable at both wholesale and retail levels.
- During the policy review process, there were calls for a comprehensive review of the e-rate, its application and its impact. This included arguments that the e-rate be extended to additional beneficiaries.

The Panel recommends that

a) The current e-rate provisions should be reviewed against objectives set and in relation to best practice.

b) The review must include an assessment of the funding arrangement for the e-Rate.

c) The review must focus on developing stronger provisions to address the loopholes which have hampered implementation of e-rate to date. These include challenges in relation to the fair application of e-rate regulations on service and internet providers and ensuring that all licensees contribute towards subsidising related costs, the difficulty of ring-fencing expenses qualifying for the e-rate at schools and clarity on funding of the remaining 50% by schools that cannot afford even the reduced rate.

d) With regards to the scope of the e-rate, there is agreement that in the interim it continues to be applied as per current scope. However the recommended review must also consider the extent that it is feasible to expand the e-rate scope to include rural clinics, and a range of other public institutions which require broadband services for their core function such as public libraries, clinics, hospitals, correctional facilities and police stations.