



A CONSULTATION DOCUMENT ISSUED BY THE TELECOMMUNICATIONS, RADIOCOMMUNICATIONS AND BROADCASTING REGULATOR (TRBR)

10th June 2020

The e-mail address for responses to this document is to: consultation@trbr.vu, or post/deliver to:

Telecommunications, Radiocommunications and Broadcasting Regulator (TRBR)

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<http://www.trbr.vu>

1. This draft Consultation has been produced with the objective of informing all the required stakeholders on this draft TRBR Guideline on Universal Access attached in Appendix 2, in relation to Section 19 of the Telecommunications, Radiocommunications and Broadcasting Regulation Act No. 30 of 2009 as amended by Amendment 22 of 2018 (the “Act”) and the Telecommunications Licences issued to all service providers.
2. This Guideline relates to the administration of the Universal Access Program by the Telecommunications, Radiocommunications and Broadcasting Regulator (Regulator) and his staff in accordance with the Act.
3. The Guideline has been prepared and to be published to provide fuller context and information for stakeholders in the Universal Access Program and will enable them to understand the approach that the Regulator is taking on these matters.
4. The Guideline seeks to provide some administrative rigor for the management of UAP issues, and to ensure that the Universal Access Program continues to effectively and efficiently achieve its primary purpose of providing modern, affordable and sustainable telecommunications services, particularly to areas and communities that are unserved or underserved or which have high service costs and demand below levels that would justify investment on commercial grounds.

5. This Guideline is primarily derived from Part 4, section 19 of the Act which TRBR seeks to receive comments, from all interested parties, particularly the government and the licensees on the provisions as set out in this draft Guideline.
6. Comments can be submitted by filling in a response form attached in the Appendix 1 and emailed to consultation@trbr.vu or delivered to the Telecommunications, Radiocommunications and Broadcasting Regulator, P.O. Box 3547, Port Vila, Vanuatu.
7. TRBR will accept Comments in either French, Bislama or English.
8. If Comments are submitted in printed format, they must be submitted on A4 paper accompanied, wherever possible, by an electronic storage device containing the Comments in electronic format.
9. Unless submissions are marked “confidential”, TRBR reserves the right to make all submissions available to the public. If a submission is marked “confidential”, reasons should be given which TRBR will evaluate. TRBR may publish or refrain from publishing any document or submission, at its sole discretion.
10. Comments should be submitted by **4pm, on 26th June 2020**.

Appendix

RESPONSE FORM

CONSULTATION ON THE DRAFT GUIDELINE on Universal Access (the “Draft Guideline”)

1. This form should be emailed to consultation@trbr.vu by **4 pm, on 26th June 2020**.

Alternatively, responses may be delivered to the Telecommunications, Radiocommunications and Broadcasting Regulator, PO Box 3547, Port Vila.

TRBR will use the responses to this consultation to refine the Draft Guidelines.

Contact details of the interested party responding:

Name: _____

Principal contact person: _____

Physical address: _____

Telephone: _____

Fax: _____

E-mail: _____

Questions:

a. Do you agree on the content of the Draft Guideline? If not, what would you like to be changed or added?

b. With respect to the Part 2 section 4, Propose project, what other information in relation to the project would you like to be included to this Draft Guideline, if any?

c. What rules in this guideline do you think should not be included in this Draft Guideline?

Draft GUIDELINE ON UNIVERSAL ACCESS

INTRODUCTION

This Guideline relates to the administration of the Universal Access Program by the Telecommunications, Radiocommunications and Broadcasting Regulator (Regulator) and his staff in accordance with the Telecommunications, Radiocommunications and Broadcasting Regulation Act No. 30 of 2009 as amended.

The Guideline has been prepared and published to provide fuller context and information for stakeholders in the Universal Access Program, and will enable them to understand the approach that the Regulator is taking on these matters.

In particular, the Guideline seeks to provide some administrative rigor for the management of UAP issues, and to ensure that the Universal Access Program continues to effectively and efficiently achieve its primary purpose of providing modern, affordable and sustainable telecommunications services, particularly to areas and communities that are unserved or underserved or which have high service costs and demand below levels that would justify investment on commercial grounds.

PART 1 PRELIMINARY

1. Definitions

In this Guideline, unless the contrary intention appears:

Act means the Telecommunications, Radiocommunications and Broadcasting Act No. 30 of 2009;

Approved Project means a discrete activity, infrastructure development, or technology upgrade approved by the Regulator for inclusion in the Universal Access Program for a financial year;

Play or Pay means the policy under which a licensed service provider who is liable to pay a levy pursuant to section 19 of the Act may elect to discharge some or all of that liability by undertaking Approved Projects to a value equivalent to the amount of the liability so offset;

Proposed Project means a discrete activity, infrastructure development, or technology upgrade proposed by a licensed service provider or any other person for inclusion in the Universal Access Program for a financial year;

Universal Access Policy (UAP) means the policy developed by the Minister and approved by the Council of Ministers on December 2013 and later extended by decision 291 of 2019, including any subsequent amendments approved by the Council of Ministers; and

All terms unless otherwise stated or clearly implied by the context in which they are used have the same meaning as in the Act.

2. Scope

Unless otherwise expressly stated, this Guideline only applies in respect of the administration of the Universal Access Policy and the Universal Access Fund, and does not apply to any other area of administration under the Act.

PART 2 PLAY OR PAY OPTION

3. Notice of election

A licensed service provider subject to a liability to pay a levy imposed pursuant to section 19 of the Act may elect to discharge some or all of that liability by undertaking Approved Projects through the provision of a notice in writing to the Regulator. In the absence of a provision of notice in writing, the Regulator will deem that the licensed service provider has elected to pay levies in full.

4. Proposed Projects

(1) A notice for the purpose of paragraph 3 above shall include the following:

- (a) a description of each Proposed Project that the licensed service provider proposes to undertake;
- (b) the date on which construction or development of the Proposed Project is proposed to commence, the date on which it is proposed to be completed, and the date on which it shall commence operation;
- (c) the estimated capital cost of each Proposed Project together with information or documentation in support of that estimate;
- (d) the estimated annualised on-going costs to keep the facility or service described in the Proposed Project operating;
- (e) forecast annualised revenue that each Proposed Project will generate, including additional revenue forecast to be generated outside the location in which the Proposed Project is intended to be situated, such as, for example, revenue associated with additional calls from elsewhere to telecommunications users within the location;
- (f) a certification that the Proposed Project is not expected to be profitable over its economic life because the expected additional revenues generated as a result of the Proposed Project will not cover annual operating costs, appropriate provision for depreciation and a reasonable return on the capital employed; and
- (g) a certification that the Proposed Project would not be implemented unless accepted as an Approved Project under the play or pay policy by the Regulator.

(2) A licensed service provider may propose additional Projects to the Regulator in writing following the notice of election provided that the information set out in sub-paragraph (1) is included in the application.

PART 3 CRITERIA FOR PROJECT APPROVAL

5. Regulator may approve, reject or refer back Proposed Projects

The Regulator may approve or reject Projects proposed by a licensed service provider in its written notice of election or in any subsequent application or may refer Proposed Projects back to the licensed service provider for more information.

6. Criteria for approval

In approving a Proposed Project, the Regulator shall have regard to all relevant circumstances including the following considerations:

- (a) whether the information set out in paragraph 4 has been provided by the licensed service provider;
- (b) whether the Proposed Project is within the purview of the Universal Access Policy and its completion will contribute to the objectives of that policy;
- (c) whether it would be profitable to undertake the project on a commercial basis;
- (d) whether the Proposed Project should be deferred in favour of other projects in the relevant year having regard to the relative potential benefits to telecommunications users and the total UAP budget available;
- (e) whether the Proposed Project has been funded in whole or in part from sources other than the resources of the licensed service provider; and
- (f) whether the area for the project has been identified as a potential UAP site and will potentially contribute to the UAP objective as in b).

7. Valuation of Approved Projects

- (1) When approving a Proposed Project, the Regulator shall nominate the value that may be claimed as an offset against the levy liability of the licensed service provider in each relevant year affected by the Proposed Project.
- (2) The valuation of an Approved Project shall be a matter for the discretion of the Regulator, having regard to:
 - (a) the information provided about the Proposed Project by the licensed service provider; and
 - (b) other information about the costs of similar projects that may be available to the Regulator.
- (3) The maximum valuation that may be given by the Regulator when approving a Project shall be the capital costs of infrastructure involved in its construction or development. If it appears that the forecast additional revenue generated by the Project is unlikely to cover operational and other on-going costs associated with the facility or service that comprises the Project then the licensed service provider may apply for a subsidy pursuant to section 18 of the Act and to Part 7 of this Guideline.

PART 4 ADVICE OF APPROVAL

8. Information to be conveyed to Licensed Service Provider

The Regulator will determine whether to approve, reject or approve with amendments the Proposed Projects of each licensed service provider that elects to “play” in relation to some or all of its levy payment obligations and will advise its decision in each case together with the following information:

- (1) In relation to each Proposed Project whether it has been approved, rejected or approved with amendments;
- (2) In relation to each Approved Project, the valuation that has been given for UAP levy purposes and the reasons for that valuation;
- (3) In relation to each rejected project, the reasons for that rejection;
- (4) In relation to each approval with amendments, the amendments that the Regulator is seeking and the reasons for them;
- (5) The total value of all Approved Projects for the relevant financial year that are to be undertaken by the licensed service provider;
- (6) If the total value of all Approved Projects exceeds the levy payment obligation of the licensed service provider for the relevant financial year, a calculation of the carry-over credit against levy payments in the following financial year, provided the play and pay arrangements of the UAP apply in the following financial year; and
- (7) If the total value of all Approved Projects is less than the levy payment obligation of the licensed service provider for the relevant financial year, a calculation of the shortfall together with an invitation to pay the balance as a levy payment or to apply to the Regulator with additional Proposed Projects for approval.

PART 5 COMPETITIVE TENDERING FOR APPROVED PROJECTS

9. Competitive tendering process at the discretion of the Regulator

The Regulator may determine at his discretion that an Approved Project, whether originally proposed by a licensed service provider or another person, should in the public interest be awarded subject to a competitive tender process to the licensed service operator that offers the best terms for undertaking the work.

10. Criteria for tendering

Without limitation to the discretion of the Regulator in making a decision under section 9, the Regulator shall have regard to the following matters when deciding in to award an Approved Project by competitive tender:

- (1) The specific skills and capabilities that may be required to undertake the Project;
- (2) The high value of the Project;
- (3) The need to test cost of the Project through an arms-length commercial process; and
- (4) The project has not been proposed by a licensed service provider, but has in the view of the Regulator a priority justifying inclusion in the universal access program for the current or succeeding financial year.

PART 6 SUBSIDIES FOR APPROVED PROJECTS

11. Approved projects for which subsidies may be paid

Whether a subsidy shall be paid from the UAP fund shall be determined by the Regulator, having regard, without limitation, to the following matters:

- (1) The availability of funds for the Approved Project in the UAP Fund, having regard to other commitments of the Fund;
- (2) The Approved Project requires additional resources or capabilities that licensed service providers do not have and could not be expected to acquire in the normal course of their operations;
- (3) The Approved Project has characteristics that make it an important priority for the Government but not an equally important priority for licensed service providers;
- (4) The Approved Project requires on-going support for the recovery of ongoing operating expenses;
- (5) That the amount of the subsidy is fair and reasonable having regard to relevant considerations including:
 - a. The overall cost of the Approved Project;
 - b. The revenue likely to be earned by the licensed service provider as a result of the Approved Project, both within and outside the area in which the Approved Project is located;
 - c. The number of people that will benefit from the services supported by the Approved Project and the extent of the benefit;
 - d. The level of subsidy provided for similar Approved Projects in the past;
 - e. The amount of subsidy sought by the licensed service provider; and
 - f. Other considerations raised by the licensed service provider in support of the subsidy being requested.
- (6) That the licensed service provider agrees to maintain the infrastructure after UAP has expired.

PART 7 REPORTING ON APPROVED UAP PROJECTS BY RELEVANT LICENSED SERVICE PROVIDER

12. Reporting obligation

- (1) It shall be a condition of the approval of any Approved Project that the relevant licensed service provider shall report to the TRBR at the end of each calendar month from the date of approval until the completion of the project.
- (2) A project shall be considered to be completed when it has been commissioned and the network, site or facility involved has been commissioned and is in service.
- (3) The report in each case shall contain the following information:
 - a. Identification of the Project;
 - b. Whether work on the planning, ordering, installation, testing or commissioning of the network, site or facility involved in the Project has been completed;
 - c. Estimated commissioning date; and
 - d. Other information that may reasonably be needed to enable TRBR to form a view on progress with the Project.

Brian Winji

Telecommunications, Radiocommunications and Broadcasting Regulator

2nd June 2020