



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.

This Guideline has taken into account the comments provided by industry and stakeholders on earlier drafts and has been made following the confirmation by the Council of Minister's (COM) on 8th October 2020 and the COM Decision, 291, of 2019 which approved the extension of the current Universal Access Policy to 1st January 2022.

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 better understand the approach that the Regulator is taking on these matters.

In particular, the Guideline seeks to provide some administrative rigor for the better 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:

Access Provider, for the purposes of Part 8 of this Guideline, means the licensed service provider that is managing any infrastructure or site that has been fully or partly funded under the Universal Action Policy;

Access Seeker, for the purposes of Part 8 of this Guideline, means an eligible party seeking access to and/or sharing of infrastructure or a site that has been fully or partly funded under the Universal Access Policy;

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

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 approach under which a licensed service provider who is liable to pay a levy pursuant to clause 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 to 1st January 2022, 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 to 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 is liable to pay a levy imposed pursuant to section 19 of the Act:—

- (a) by electing to discharge some or all the liabilities or
- (b) by an undertaking of an Approved Project by a Notice in writing from the Regulator.
- (c) 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 arrangement 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 make referral on 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
 - (a) apply to the Regulator or
 - (b) offer 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 clause 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, it shall be determined by the Regulator, 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 because 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.

PART 8 ACCESS TO AND SHARING OF INFRASTRUCTURE AND SITES FUNDED UNDER THE UNIVERSAL ACCESS POLICY

13. Infrastructure and sites subject to access and sharing

- (1) All telecommunications infrastructure and sites that have been fully or partly funded under the Universal Access Policy shall be available for access and sharing by eligible persons as prescribed in Clause 14 and subject to the conditions prescribed in Clause 15 of this Part.
- (2) For the purposes of this Clause telecommunications infrastructure or a site shall be deemed to have been full or partly funded under the Universal Access Policy whether it has been constructed in lieu of payment of a levy by a licensed service provider or whether the relevant licensed service provider has received payment of an amount or amounts for the Universal Access Fund as a contribution to the cost involved.
- (3) Any question about whether a particular item of infrastructure or site is subject to access or sharing may be resolved by reference of the matter to the Regulator for determination.

14. Eligible parties entitled to access and share under this Part

All persons who are licensed service providers in Vanuatu are eligible to access and share infrastructure and sites under this Part, for as long as they remain so licensed.

15. Conditions relating to access and sharing under this Part

- (1) Access and sharing of telecommunications infrastructure and sites under this Part shall be on a fair and reasonable basis and shall have regard to that portion of the capital and ongoing costs associated with the development and operation of the infrastructure or site that have been funded under the Universal Action Policy.
- (2) In particular, and without limiting the effect of subclause (1):
 - a. Access and sharing shall only be permitted if technically feasible;
 - b. The reasonable costs, if any, that the Access Provider may incur in enabling an Access Seeker to have access or to share shall be recoverable from the Access Seeker as a once only cost;
 - c. Costs associated with on-going access may be recovered by the Access Provider from the Access Seeker on a fair and equitable basis;
 - d. The loss of revenue that might result from access and sharing shall not be considered as a cost to the Access Provider for the purposes of recovery from the Access Seeker;
 - e. An Access Provider shall neither recover nor seek to recover costs that it has not incurred, including the contribution made from the Universal Access Fund or the costs associated with levy payments that the Access Provider would otherwise have been liable to pay but for its construction of the infrastructure or site;

- f. Fair and equitable sharing of the costs of access to or sharing of infrastructure or a site shall be in accordance with the proportionate use of the infrastructure or the site unless the parties agree on another basis for the apportionment of costs;
- g. An Access Seeker and an Access Seeker shall record in writing their final agreement on access to and sharing of each and every relevant infrastructure and site, and the Access Seeker shall be responsible for registering the agreement with the Regulator;
- h. The Regulator may provide additional guidelines on these matters from time to time, with which the parties shall comply; and
- i. The parties or either of them may seek arbitration on any matters relating to access to or sharing of infrastructure or a site on which the parties are unable to agree, provided they have attempted in good faith to reach a settlement on such matters beforehand.



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21 October 2020