

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 38 OF 2012

**The Information and Communication Technologies Act,
2009
(Act No. 15 of 2009)**

**The Information and Communication Technologies
(Universal Access) Regulations, 2012**

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SCHEDULE

IN EXERCISE of the powers contained in sections *seventy* and *ninety-one* of the Information and Communication Technologies Act, 2009, and on the recommendation of the Authority the following Regulations are hereby made:

PART I

PRELIMINARY

- | | |
|--|----------------|
| 1. These Regulations may be cited as the Information and Communication Technologies (Universal Access) Regulations, 2012. | Title |
| 2. In these Regulations, unless the context otherwise requires— | Interpretation |
| “accessibility” means the presence throughout the geographical area of electronic communication services, including in particular, for persons with disabilities; | |
| “access point” means a facility from which users can have the use of electronic communications services, including payphones, fax, e-mail, multi-purpose community telecentres, and cyber cafes; | |
| “affordability” means the ability of an electronic communications service to facilitate the provision of services at prices that allow the majority of the population to utilise the service; | |
| “agreement” means a fund management agreement entered into between a manager and the Authority under regulation 16; | |
| “Authority” means the Zambia Information and Communications Technology Authority provided for under section <i>four</i> of the Act; | |
| “availability” means easily and readily accessible basic communication services by users at any designated time, including persons with disabilities; | |
| “basic communication service” means a communications service that facilitates end-to-end transmission of information; | |
| “commercial bank” means a bank holding a licence under the Banking and Financial Services Act; | Cap. 387 |
| “customer premises equipment” means any communication terminal equipment, mobile cellular telephone handset, fixedline telephone set, personal computer, facsimile machine, radio receiver, television receiver and any other equipment permitted to be utilised for access to basic communication services; | |

Act No. 15 of
2009

“Fund” has the meaning assigned to it in the Act;
“Fund account” means an account operated by the Authority under regulation 13;
“information and communication technology” has the meaning assigned to it in the Act;

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2009

“licensee” has the meaning assigned to it in the Act;
“manager” means a person authorised by the Authority to administer and manage the moneys advanced from the Fund;
“public communications network” means an electronic communications network used for the provision of electronic communications services to the public;
“project” means a universal access project referred to in regulation 11;
“sustainability” means the management and maintenance of the communications points of presence in a manner that will ensure the continuation of the communication services provided at all times;
“tariff” means a charge by a licensee levied on consumers of electronic communications services as consideration for the service rendered;

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2009

“universal access” has the meaning assigned to it in the Act;
“universal service” means making electronic communications services available to any person at domestic level regardless of their geographical or physical location;
“universal service obligation” means the requirement of universal service providers to provide a defined minimum communication service or services of specified quality or quantity determined by the Authority for purposes of achieving increased access to electronic communications services and tools;
“unserved areas” means areas designated by the Authority as areas that do not have information and communication technology infrastructure and electronic communications services; and
“under-served areas” means areas designated by the Authority as areas that do not have adequate, affordable, sustainable, basic or advanced quality information and communication technology infrastructure and electronic communications services.

3. These Regulations shall apply to all licensees designated as universal service providers by the Authority. Application

PART II

UNIVERSAL ACCESS

4. (1) The Authority shall, in promoting the provision of universal access— Guiding principles for universal access

(a) ensure that the provision of service to unserved and under-served areas meets the requirements of affordability, accessibility, availability, sustainability and quality of service;

(b) encourage initiatives to extend, upgrade and expand the capacity and roll out of existing infrastructure in specific areas to unserved or under-served areas, including initiatives by local communities;

(c) regularly assess the implementation of universal access programs and take necessary action and adjustments; and

(a) establish and determine, for sharing, the net cost of universal access obligations between designated licensees so that universal access obligations do not represent an unfair burden on any licensee providing universal access.

5. (1) The Authority shall, by notice in the *Gazette*, designate areas as universal service areas. Designation of universal service areas

(2) The Authority shall take all reasonable steps to facilitate the advancement of universal access in the totality of any area designated as a universal service area.

6. (1) A licensee may apply to the Authority for designation as a universal service provider in Form I set out in the Schedule. Designation of universal service providers

(2) The Authority shall, within sixty days of the receipt of an application under subregulation (1), approve or reject the application:

Provided that where the Authority rejects an application, it shall inform the applicant of the reasons for the rejection.

(3) The Authority shall, where it approves an application under sub-regulation (1), designate the licensee as a universal service provider, in Form II set out in the Schedule.

(4) The Authority shall approve an application for designation as a universal service provider where the Authority is satisfied that—

- (a) the applicant has the capacity to meet the supply of appropriate equipment, goods and services for—
 - (i) persons with special needs;
 - (ii) the delivery of quality and affordable communication services; and
 - (iii) ensuring availability and accessibility to all persons; and
- (b) the applicant has duly submitted a plan specifying—
 - (i) the appropriate equipment, goods and services that the applicant will supply in fulfilment of the universal service obligation in the designated area;
 - (ii) how the applicant will fulfil the universal service obligation;
 - (iii) the appropriate terms and conditions on which the equipment, goods and services are to be supplied;
 - (iv) the appropriate arrangements for the marketing and the supply of the equipment, goods and services to the persons for whom it is intended to benefit;
- (c) the designation will not have a negative impact on the level of competition in the particular area or place;
- (a) there are inadequate services in particular areas or places;
- (e) the designation will assure the commercial viability of installation of electronic communications networks or providing electronic communications services in particular areas or places;
- (j) the designation will not create any barriers to the use of available services;
- (g) the application complies with any other requirements under the Act, any other law or as are stipulated by the Authority; and
- (h) the application is not contrary to the public interest, public health or safety.

Performance monitoring 7. (1) The Authority shall carry out periodic performance monitoring of a universal service provider in order to ensure that the performance of the universal service provider meets the levels of performance required by the Authority.

(2) The Authority may, where the Authority considers that a universal service provider has not met the levels of performance required by the Authority, revoke the designation of that provider as a universal service provider.

(3) The Authority shall, every six months, publish in a daily newspaper of general circulation in Zambia the performance of the universal service providers in meeting their service obligations.

8. (1) A universal service provider shall —

(a) ensure the availability of services to every household that requests public communication services;

(b) provide a mechanism to enable the members of the public access electronic communication services; and

(c) ensure that—

(i) it provides to the members of the public, the services that the Authority determines as essential; and

(ii) services are reasonably accessible to all persons on an equitable basis, irrespective of location.

(2) The Authority may, in promoting universal service obligations, set up schemes for price caps, geographical averaging or other similar schemes for some or all the services.

(3) The Authority shall design schemes that ensure affordable access to services based on the principles of transparency and non-discrimination through guidelines setting out the criteria that ensures affordable access to all persons.

9. A designation made under these Regulations shall not, without the prior approval of the Authority, be transferred, bought, sold, assigned, leased, mortgaged or charged to a third party.

10. (1) Subject to the other provisions of these Regulations, the Authority may revoke a designation if—

(a) the universal service provider informs the Authority, in writing, that the universal service provider does not intend to provide electronic communications services any longer;

(b) the Authority has reasonable grounds to believe that the designation was obtained through fraud, misrepresentation, concealment of a material fact or submission of incorrect information;

Service obligations in respect of universal service area

Prohibition of transfer, selling, leasing, etc. of designation

Revocation of designation

Act No 15 of
2009

- (c) the universal service provider has not, within the period stipulated by the Authority, commenced the service for which the designation was made;
- (a) the universal service provider provides an electronic communications service that the universal service provider is not licensed to provide;
- (e) the period for which the designation was made has lapsed;
- (j) the universal service provider is convicted of an offence involving fraud or dishonesty, or any other offence under the Act or any other written law and sentenced therefor to a term of imprisonment of six months or more without option of a fine;
- (g) since the designation, circumstances have arisen disqualifying the universal service provider from holding the designation;
- (h) the universal service provider, without a justified reason, has ceased to provide the services in respect of which the universal service provider was designated, for more than sixty consecutive days or ninety days with intermissions during the calendar year;
- (i) the universal service provider has failed, in spite of written notice, to comply with the conditions of the designation;
- (j) the revocation of the designation is necessary in the interest of public safety, security, peace, welfare or good order;
or
- (k) the Authority considers it appropriate in the circumstances of the case to do so.

(2) Where a universal service provider does not comply with the Act or with the conditions of the designation, the Authority shall notify the universal service provider of the measures that the universal service provider should undertake, within a specified period, to comply with the conditions of the Act or the designation.

(3) The Authority shall, where a universal service provider fails to comply with a notice issued under subregulation (2), within a specified period of time, revoke the designation.

(4) The Authority shall not be liable to refund a universal service provider whose designation is revoked in terms of this regulation, the contribution made by the universal service provider to the Fund.

(5) Where a designation is revoked under this regulation, the designation shall be void and shall be surrendered to the Authority.

(6) The Authority shall, before revoking a designation under this regulation, give the universal service provider an opportunity to be heard.

11. (1) A universal service provider shall, in fulfilling any universal service programs, use information and communication technologies that are necessary for the provision of the services. Technology neutrality

(2) The technologies under sub-regulation (1) shall be provided in accordance with the Act or any other written law.

12. A universal service provider shall ensure that the technology used does not disrupt any existing electronic communications networks or networks planned in writing and approved by the Authority. Technology homologation

13. (1) The Authority may initiate and implement a universal access project in a designated universal service area upon assessing the needs of the area. Universal access projects

(2) The Authority may designate a universal service provider to execute any universal access project referred to under sub-regulation (1) in accordance with the criteria determined by the Authority.

PART III

ADMINISTRATION OF FUND

14. The Authority shall determine a subsidy for each universal service area in respect of each universal service obligation for the period specifying— Universal service subsidy

(a) the amount, or method for working out the amount of the subsidy; and

(b) the circumstances in which a universal service provider is eligible to be paid the subsidy.

15. (1) Subject to sub-regulation (2), the Authority shall open and operate an account for purposes of the Fund at such commercial bank as the Authority may determine, in which shall be deposited the moneys received for universal access as stipulated in the Act. Fund account

(2) A commercial bank may host and operate the Fund account if it—

(a) is compliant with the provisions of the Banking and Financial Services Act and any other relevant law;

- (b) has a sound balance sheet in line with the minimum standards determined by the Bank of Zambia;
- (c) offers extensive products that include institutional banking, micro and small business enterprise banking services, trade finance and project finance;
- (a) has in place a treasury section with an asset and liability committee;
- (e) has in place a well performing credit and portfolio management section; and
- (j) has in place underwriting standards for credit business that cover key sectors of the economy.

(3) The Authority shall advance moneys deposited in the Fund account to a manager, in accordance with these Regulations, for onward disbursement to eligible universal service providers.

Qualification
for
administration
of Fund
account

16. A manager shall qualify to administer and manage a Fund account if that manager—

- (a) demonstrates the ability to administer and manage a fund;
- (b) is not an undischarged bankrupt;
- (c) holds an account with, or has other financial arrangements with, commercial banks that deal with fund disbursements;
- (a) demonstrates experience in managing a diverse loan portfolio and credit appraisal;
- (e) demonstrates experience in asset management; and
- (j) demonstrates experience in the raising of capital.

Administration
and
management
of Fund
account

17. (1) A manager shall, for purposes of administering and managing a Fund account, enter into an agreement with the Authority in which the manager agrees to—

- (a) maintain a call account, in the name of the Authority, in which the balance shall represent funds awaiting disbursement to various universal access providers eligible to receive disbursement in accordance with the Act and these Regulations;
- (b) make monthly payments of interest on the call account at an agreed rate per annum;
- (c) provide cash payments to the universal access providers specified under paragraph (a), as the Authority may direct;

- (a) conduct a valuation of assets obtained from the Fund disbursements on a quarterly basis; and
 - (e) make a comprehensive report to the Authority on the loan disbursements made to applicants and the activities associated with the Fund disbursements on the accounting date.
- (2) An agreement entered into under sub-regulation (1) may specify any other terms and conditions relating to the administration and management of the Fund account consistent with the provisions of the Act and these Regulations.
- (3) The Authority shall advance a manager with an agreed amount of money from the Fund for onward lending to a universal service provider.
- (4) The Authority shall pay to the manager such money as may be agreed with the Authority.

18. (1) There shall be charged on, and discharged from, the Fund

Application
of Fund

- (a) the payment of contributions in accordance with the Act;
 - (b) all the expenses incurred in connection with, or incidental to the management and administration of the Fund, including the cost of audit; and
 - (c) any other payments authorised to be made out of the Fund under the provisions of the Act or these regulations.
- (2) The sum standing to the credit of a manager shall, until paid out in accordance with these Regulations, remain the property of the Authority and shall not form part of the assets of a fund manager or universal service provider in the event of bankruptcy or insolvency, or be liable to attachment in satisfaction of the fund manager's or universal service provider's debts.

19. (1) The manager may, subject to this regulation, with the approval of the Authority, invest any money of the Fund not required to meet the charges upon the Fund in any of the following ways:

Investment
of moneys of
fund

- (a) in any interest bearing accounts of any bank or institution which is governed by any written law;
- (b) in stocks, securities or funds issued by, or on behalf of, the Government or in stocks, securities or funds guaranteed by the Government; and
- (c) in such other investment as may be approved by the Authority.

(2) The manager shall not without the prior approval of the Authority, invest assets in excess of twenty percent of the Fund's net asset value in any one form of investment.

Contributions
to Fund and
rates of
contribution

S.I. No. 34 of
2010

20. (1) A licensee shall contribute, in accordance with section *seventy* of the Act, at the rate not exceeding 1.5 percent of gross annual turnover collected by the Authority under the Information and Communications Technologies (Licensing) Regulations, 2010.

(2) A contribution made under sub-regulation (1), shall not exceed fifty percent of the total collectable annual operating fees payable to the Authority.

(3) Contributions payable by a licensee under this regulation shall be payable annually in advance and shall be effected by payment to the Authority.

(4) The Fund may receive moneys from appropriations from Parliament, grants, donations and other sources.

(5) The money received by the fund under subregulation (4) shall be deposited in the Fund

account and shall form part of the moneys accruing to or otherwise vesting in the fund.

Application
for funds

21. (1) A universal service provider wishing to develop any un-served or under-served area may apply to the Authority for money to develop that area:

Provided that the money from the Fund shall only be used to carry out development which has been approved by the Authority.

(2) The application referred to in subregulation (1) shall be in writing and shall contain the following particulars:

- (a) the development proposal;
- (b) the name of the un-served or under-served area for which the development proposal is to be implemented;
- (c) the estimated cost of the development that the universal access provider wishes to undertake;
- (a) a plan for the implementation of the development proposal; and
- (e) a plan for the future operation and maintenance of the development and how the development will be financed.

22. (1) The Authority shall, within sixty days of receipt of an application by a universal service provider approve or reject the application.

Determination
of
applications

(2) The Authority shall, when deciding an application take into account the following:

- (a) whether the universal service provider's development proposal is acceptable and feasible;
- (b) whether the development proposal justifies funds being requested;
- (c) whether the funds being requested may be released as a lump sum or in instalments;
- (d) the possible time within which the development proposal will be implemented; and
- (e) any other matter necessary for giving effect to the provisions of this regulation

(3) Where the Authority finds that the development proposal is feasible and acceptable, the Authority shall direct the Fund Manager to make a disbursement of funds and shall include in the direction

- (a) the name of the universal service provider requesting the disbursement;
- (b) the development proposal;
- (c) the amount of money required;
- (d) the Authority's finding.

(4) Where the Authority accepts a universal service provider's application the manager shall release the money to the universal access provider concerned.

(5) The manager shall, within seven days of the decision by the Authority inform, in writing, the universal access provider concerned of that decision.

23. Disbursement of money to the universal service provider from the Fund shall be by way of cheque or bank transfer.

Disbursement
of funds to
universal
service
provider

24. (1) A universal service provider to which money from the Fund is to be disbursed in accordance with regulation 23, shall open and maintain a separate bank account at a bank of its own choice, where only money transferred from the Fund shall be kept.

Banking of
money

(2) The account referred to in subregulation (1) shall be called a “universal service account” and shall bear the name of the universal access provider that opens the account.

(3) A person who contravenes sub-regulation (1) commits an offence and is liable, upon conviction, to a fine.

Accounting
and auditing
of universal
access funds

25. (1) The universal service provider to which the money is disbursed shall, every three months, and at the end of the implementation of the proposed development, present a report to the manager concerning the proposed project.

(2) The report referred to in subregulation (1) shall include

(a) a statement showing income and expenditure;

(b) a statement as to whether more funds are required; and

(c) a forecast of future requirements;

(3) The universal service account shall be audited annually by independent auditors appointed by the Fund.

(4) The auditor’s fees shall be paid by the Fund.

Termination
of agreement

26. (1) The Authority shall terminate an agreement with a manager relating to the administration and management of a Fund account if the manager—

(a) breaches any terms and conditions of the agreement;

(b) ceases to qualify to administer and manage the Fund account in accordance with these Regulations; or

(c) contravenes any provision of the Act or these Regulations.

(2) A manager shall, where the Authority terminates an agreement with the manager pursuant to sub-regulation (1), comply with any other directives from the Authority relating to the money advanced to the manager under these Regulations.

Accounting
and auditing
of Fund

27. (1) A manager shall cause to be kept proper books of account and other records relating to the Fund.

(2) The accounts of the Fund shall be audited annually by independent auditors appointed by the Authority with the approval of the Auditor-General.

(3) The auditor’s fees shall be paid by the Fund.

Annual
report

28. (1) As soon as practicable, but not later than sixty days after the end of the financial year, a manager shall submit to the Authority a report concerning the manager’s activities during the financial year.

(2) The report referred to in subparagraph (1), shall include information on the financial affairs of the Fund and there shall be appended to the report—

- (a) an audited balance sheet; and
- (b) an audited statement of income and expenditure.

SCHEDULE
(Regulations 6(1), 6(2) and 6(5))

PRESCRIBED FORMS

Form I
(Regulation 6(1))
(To be completed in triplicate)



**THE ZAMBIA INFORMATION AND COMMUNICATION TECHNOLOGY
AUTHORITY**

**The Information and Communication Technologies Act, 2009
(Act No. 11 of 2009)**

**The Information and Communication Technologies
(Universal Access) Regulations, 2010**

APPLICATION FOR DESIGNATION AS UNIVERSAL SERVICE			
Tick as appropriate)	Shaded fields for official use only	Licence code	
		Date/Time	
<i>Information Required</i>		<i>Information Provided</i>	
1.	Type of Service		
2.	(a) Name(s) of applicant(s)		
	(b) Type of applicant	Individual	Company
3.	Tax Payer Identification Number (TPIN)		
4.	(a) Nationality		
	(b) Identity card (National Registration Card No. or Passport No.) – Attach certified copies		
5.	(a) Notification address Tel: Fax: E-mail:		
	(b) Information of contact person authorised to represent the Applicant Tel: Fax: E-mail:		
6.	(a) Company name		
	(b) Company address		
	(c) Company registration No. (Attach copies of certificate of registration)		
7.	Project details		
(a) Location	Proposed launch date		
	District		
(b) Date of designation			

8. Appendices*	
Appendix No. 1	Universal service policy statement (setting out the principles the licensee will apply in supplying equipment, goods and services as a universal service provider)
Appendix No. 2	Marketing plan in respect of service obligation or service area to be covered (setting out the equipment, goods and services that the provider will supply in fulfillment of the service obligation and arrangements for supplying and marketing the equipment, goods and services) and in particular: <ul style="list-style-type: none"> (a) time-frames for the supply of specified equipment, goods and services; (b) performance standards relating to the fulfillment of universal service obligations; and (c) processes for advising persons about the availability, offer and supply of equipment, goods and services in the fulfillment of the universal service obligation, and the terms and conditions on which the equipment, goods or services are offered or supplied.

* The information required to be included in the various appendices

QUALITY OF SERVICE UNDERTAKING

I/we declare that the quality of service I/we provide shall meet the minimum requirements set out under the Act and any other law or guidelines published by the Authority or any international standard to which the designation requires adherence.

DECLARATION

I/we declare that all the particulars and information provided in this application are complete, correct and true and I/we agree that in the event that any of the said particulars and information provided is found to be untrue or fraudulent, the designation will be revoked.

I/we agree that in the event of the revocation of the designation, any fee paid to the Authority for designation shall be forfeited.

I/we declare that in the event that the nature of my/our business changes, or I/we no longer carry out operations in terms of the designation, I/we will notify the Authority in which case my/our designation may be revoked or revised.

Declared at this day of 20 by the following persons who are duly authorised to sign for and on behalf of the applicant under the authority of the Power of Attorney or Board Resolution which is hereby attached.

Applicant 's name

Date

Applicant's signature

FOR OFFICIAL USE ONLY

Received by: _____
Officer

RECEIPT No.

Date Received _____

Amount Received _____

Serial No. of application: _____

STAMP

Form II
(Regulation 6(2))



**THE ZAMBIA INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY**

**The Information and Communication Technologies Act, 2009
(Act No. 15 of 2009)**

**The Information and Communication Technologies
(Universal Access) Regulations, 2010**

LICENCE No.....
DESIGNEE REF.....

UNIVERSAL ACCESS PROVIDER DESIGNATION

(Section 73 of the Information and Communication Technologies Act, No. 15 of 2009)

Designee's name

Address.....

Type of universal access service:

(a).....

(b).....

(c).....

(d).....

This designation is granted for a period of commencing on the

day of 20.....

The conditions of the designation are as shown in the Annexures attached hereto.

Issued at this day of

Director - General

ENDORSEMENT OF DESIGNATION

This designation has this day of

..... been registered in the Register.

.....
Director-General

Transfers/ Amendments or variations/ renewals

Date of transfer/ amendment/variation/ renewal	Details of transfer/ amendment/variation/ renewal	Date of Registration No. Registration and	Signature of Director-General

LUSAKA
6th June, 2012

Y. MUKANGA,
*Minister of Transport, Works, Supply
and Communications*