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UNIVERSAL ACCESS RULES  
CONSULTATION DRAFT

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Communications Commission of Kiribati

**31 OCTOBER 2014**

**CCK 072014**

## PART 1 - PRELIMINARY

1. Section 66 of the Communications Act 2012 provides that the Commission shall make universal access rules prescribing the operation of the Universal Access Fund and the provision of services pursuant to a Universal Access Plan and its project plans.

### *Short title and effective date*

2. These rules may be cited as the Universal Access Rules and are effective upon publication.

### *Definitions and interpretation*

3. The words and expressions used in these Rules have the same meaning as in the Communications Act 2012, including the definitions set forth below:

‘Act’ means the Communications Act 2012

‘Day’ means a calendar day

‘Fund’ means the Universal Access Fund established under these Rules

‘Person’ means a natural or legal person

‘Service provider’ means a person who holds an Individual licence to provide communications networks and services

‘Smart subsidy’ means a one-off subsidy that is designed to make a potentially loss-making service into a service with a commercial return

‘Universal access’ means ensuring that everyone has reasonable means of access to communications services in Kiribati

‘Universal Access Advisory Committee’ means the committee established to make recommendations to the Commission about the contents of a Universal Access Plan

### *Part 2 – Objectives of these Rules*

4. The objective of these rules is to address the key components of the universal access scheme in Kiribati including the:
  - (a) operation and administration of the Universal Access Fund
  - (b) provision of services pursuant to a Universal Access Plan and its project plans
  - (c) procedures for competitive tendering and other methods for receiving support under the Universal Access Fund.

### *Part 3 - Universal Access Fund*

#### *Universal Access Funds*

5. The Commission shall establish, with a separate account, a Universal Access Fund which shall comprise of:
  - (a) all levies payable under Section 69 (2) of the Act if and when the Commission requires such levies
  - (b) grants or donations made to or for the benefit of the fund, including any grant, contribution or loans from any international organization or donor
  - (c) any monies that the Commission receives in excess of its approved budget and forecast needs as per Section 18 (7) of the Act
  - (d) any monies received by way of interest or repayment of any loan granted from the Fund
  - (e) any monies appropriated by Parliament for the purposes.
  
6. The Commission may develop proposals for sources of funds under Rule 5 (b) should there be any actual or foreseeable gap between the available funds and the planned universal access (UA) projects.
  
7. The Commission shall only disperse money from the Fund:
  - (a) in accordance with contracts for planned UA projects
  - (b) to cover costs associated with the administration and reporting responsibilities of the Fund, which shall not exceed 1 percent of the total value of the Fund for a given Universal Access Plan.

*Fund Administration and Reporting*

8. The Commission's Department of Administration and Finance shall assign an officer to be principally responsible for the management of the Fund, including:
  - (a) identifying UA projects to support the delivery of a Universal Access Plan
  - (b) calculating the overall project cost and the maximum available subsidy for a specific UA project
  - (c) issuing tender documents and managing the tendering process
  - (d) monitoring performance against the UA projects
  - (e) processing claims for payment for UA projects conditional on the relevant project milestones having been met
  - (f) internal and external reporting on the status of the Fund and any
  - (g) coordination with the Universal Access Advisory Committee.
  
9. The Commission shall publish an annual report of the Fund's activities, containing at least the following information:
  - (a) financial reports (collections, expenditures, reserves, etc...)
  - (b) description of projects that were funded
  - (c) performance of any ongoing projects against milestones, project budget, timelines, etc.
  - (d) any revisions made to project plans
  - (e) goals and budgets for the coming years.

10. The Commission may outsource any of the functions and requirements in Rules 8 and 9 if it deems fit.

*Part 3 – Universal Access Plan*

11. The Commission shall develop a Universal Access Plan (Plan) in consultation with the Universal Access Advisory Committee, industry and other stakeholders.
12. The Plan shall promote the availability of:
- (a) the communications services under Section 67 (4) of the Act
  - (b) ICT programs that increase access to PCs and other digital devices and localized content and services, including eGovernment services and other social services and
  - (c) community ICT centers, Internet kiosks, and other community access points.
13. The Commission, in the development of a Universal Access Plan, shall consider the:
- (a) extent of existing installed networks and plans for the extension of these networks by licensed service providers
  - (b) complementary government programs by other entities such as but limited to the:
    - i. Ministry of Education (e.g. for current and planned locations and needs of any projects for provincial education such as distance learning);
    - ii. Ministry of Health (e.g. for current and planned locations and needs of any projects for health care centers);
    - iii. Ministry of Internal Affairs (e.g. for current planned development projects in the Outer Islands)
    - iv. Public Utilities Board (e.g. for provincial locations of available or near term availability of electricity)
    - v. Ministry of Communications Transport and Tourism (e.g. ICT programs and any projects to promote tourism).
  - (c) Island Councils and local industry/business advice in regard to the needs that may be addressed or new industry that may be attracted by the availability of greater access to communications services
  - (d) policies that the Minister has made in regards to universal access
  - (e) promotion of fair competition and technology neutrality.
14. A Universal Access Plan shall be developed for a two year period and include:
- (a) any geographical areas and services to be covered with a focus on areas where market forces alone are not likely to result in the delivery of the communications services in the desired timeframe
  - (b) a description of any ICT programs and their potential value to the target community
  - (c) the timeframe for achieving 14 (a) and (b) within a two year period
  - (d) any other matters that may be prescribed.

15. The Commission shall publish all Universal Access Plans on its website.

*Part 4: Universal Access Projects*

16. The Commission shall prepare and publish one or more UA project plans to achieve the goals of a Universal Access Plan.

17. UA projects may include but are not limited to projects involving the:

- (a) installation of communications facilities
- (b) provision of communications services
- (c) support for ICT programs and local content and
- (d) training and capacity building.

18. In its process of calculating the subsidy needed for a project plan, the Commission shall undertake an economic and financial analysis in order to estimate the:

- (a) project costs
- (b) demand for the proposed services and the
- (c) potential revenue to be earned through the provision of the proposed services.

19. The subsidy determined in Rule 18 shall:

- (a) be a one-off smart subsidy, designed to make a potentially loss-making service into a service with a commercial return
- (b) not exceed the amount of funds available in the Fund.

20. A UA project plan/s shall propose measureable targets that:

- (a) make communications services and ICTs programs more widely accessible in particular geographical areas or segments of society in Kiribati
- (b) include the timing by which deployment of services should take place
- (c) are realistic and feasible so that commercial providers, with a smart subsidy, can achieve the desired targets in the prescribed timeframe.

21. A project plan(s) shall be the basis for calling for tenders from persons for support (i.e. subsidies or concessional loans) under the Universal Access Fund.

*Part 5: Tendering Process*

*Call for Tenders*

22. The Commission shall call for tenders through a competitive process where it deems that there is likely to be competition for support in accordance with a UA project plan.

23. A call for tenders shall be published on the Commission's website and in the local press and include:

- (a) a description of the UA projects under tender, including their milestones and timeframe for completion
- (b) the location of specific islands or communities where the services are to be provided
- (c) any information regarding the particular demographic groups that the services are intended for
- (d) the maximum available subsidy for the UA project
- (e) information regarding how performance based payments will be made after the verification of the successful delivery of the project milestones
- (f) information about eligibility requirements for bidders
- (g) procedures, timeframe and other relevant information relating to registering the bidder's interest and submitting an outline of a proposal
- (h) any other matters that may be prescribed.

24. Persons may submit tendering proposals for one or more UA projects.

#### *Submission of Tenders*

25. Persons shall submit their proposal in writing within the time frame specified in the call for tenders.

26. A proposal shall include the following information:

- (a) a detailed description of the services to be made available as per the UA project and an indication of their quality, availability and price
- (b) the proposed timetable for the roll-out of the services
- (c) the projected costs (i.e. capital and ongoing operating costs) for the providing the UA project services
- (d) a detailed description of the technology to be deployed and its benefits
- (e) provisions to enable the sharing of any communications facilities to be made available as part of the UA project
- (f) measures proposed to ensure that the provision of the service/s is commercially sustainable after the project completion date
- (g) amount of subsidy required to support the tender and
- (h) any other information which the Commission may require.

#### *Assessing the Tenders*

27. The Commission, in assessing the tenders, shall consider the following:

- (a) whether the tender is responsive
- (b) whether the tender is practicable for the environment and will likely result in a commercially sustainable service
- (c) the prior experience of the person making the tender
- (d) whether the tender can be implemented according to the required timeframe
- (e) whether the requested subsidy is the lowest subsidy proposed and

- (f) other matters as the Commission deems relevant.
28. The Commission may, at any time before approving a tender, request the bidder to provide additional information or other documents within a specified time period or any extension of time granted by the Commission.
  29. The Commission having considered the technical merits of the tenders submitted shall:
    - (a) tentatively accept the tender with lowest requested subsidy for each UA project subject to negotiate clarification or non-material amendment of the details of the offers; or
    - (b) decline all offers for one or more projects.
  30. If one or more tenders are accepted as offered, the offer is formalized as a contract.
  31. If one or more tenders are accepted subject to a right to negotiate amendments, the tender as offered becomes the basis for negotiation. In this case, the Commission may:
    - (a) accept the outcome of the negotiation; or
    - (b) decline the outcome.
  32. If the outcome of the negotiation is accepted, the outcome is formalized as a contract.
  33. If the outcome of the negotiation is declined, the Commission may invite the person with a technically qualified tender and the next lowest requested subsidy to negotiate on the same terms as the tentatively accepted person.

#### *Part 6 - Claims for Payment*

##### *Making a Claim*

34. The Commission shall not make any payments from the Fund for a UA project until a claim is presented.
35. A person shall submit a written claim to the Commission in accordance with the terms of a contract for a UA project.
36. The Commission shall verify any claim based on the completion of a contractual project milestone before payment is made.
37. The Commission may, at any time, for the purposes of verifying a claim, request a person to provide any further information or other documents within a specified time period or any extension of time granted by the Commission.

##### *Payment of a Claim*

38. The Commission will pay verified claims for completed contractual project milestones no later than 30 days from the date the verification is completed by the Commission.
39. The Commission may in its absolute discretion make interim payments of any amount claimed pending the verification of the claim.

#### *Progress Reports*

40. A person who has received a contract to fulfill a UA project shall, periodically as agreed in the contract or upon request by the Commission, submit a report on the progress of any project milestones.

#### *Part 7 - Designating a Service Provider for Universal Access Funding*

41. The Commission may designate a service provider to enter into a contract with the Commission to provide the services under a UA project where:
  - (a) no person tenders for such support as part of a competitive tendering process
  - (b) it rejects the tenders received as part of a competitive tendering process or
  - (c) the service provider has a market share of a specified communications market equal to or greater than 40 percent.
42. Before making a determination under Rule 41, the Commission shall consult with the service provider about the matter, allowing at least 30 days for any required response.
43. The Commission shall pay a designated service provider the net cost incurred in implementing a UA project.
44. The net cost for implementing the UA project shall be computed as -

The cost of the project (capital and ongoing operating expenses referenced to the present) less the cost of the project, which on the basis of reasonably estimated returns, would be economic.
45. The Commission may issue guidelines to clarify the components of cost and revenue that shall be taken into account in the application of the formula in Rule 44 and any other related matters from time to time.

#### *Claims for Payment for Designated Service Providers*

46. Except for the initial agreed start-up funding for a UA project, the designated service provider shall submit a written claim no later than the 31<sup>st</sup> of March of each calendar year to the Commission for the costs for a UA project for the previous calendar year.



47. A claim shall include—
  - (a) the cost and revenue for a UA project for the previous calendar year; and
  - (b) details of how the cost and revenue have been calculated.
  
48. The Commission will review and adjust claims where:
  - (a) it has reason to believe the costs of claim have been intentionally or negligently overstated
  - (b) the costs presented in a claim are not or cannot be verified.
  
49. If the Commission decides that a claim should be adjusted, the Commission may estimate the claim for that calendar year and pay that estimated amount.
  
50. The Commission shall verify any claim by a designated person or service provider before payment is made from the Fund.
  
51. The Commission may, at any time, for the purposes of verifying a claim under Rule 50 request the designated persons and/or service provider to provide any further information or other documents within the time specified in the request or any extension of time granted by the Commission.
  
52. The Commission will pay verified claims in respect of assigned UA projects no later than 30 days from the date the verification is completed by the Commission.
  
53. The Commission may in its absolute discretion make interim payments of any amount claimed pending the verification of the claim.