UNIVERSAL SERVICE AND ACCESS AGENCY OF SOUTH AFRICA

POSITION PAPER

and

RECOMMENDATIONS TO THE MINISTER OF COMMUNICATIONS AND THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

regarding

DEFINITIONS OF UNIVERSAL SERVICE, UNIVERSAL ACCESS, UNDER-SERVICED AREAS AND NEEDY PERSONS

30 April 2009

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ACKNOWLEDGEMENTS

1. PURPOSE OF THIS POSITION PAPER

USAASA's Mandate in terms of the EC Act

Universal service is defined in the Electronic Communications Act (EC Act) as -
'the universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14.'

Universal access is defined as -
'universal access to electronic communications network services electronic communications services and broadcasting services, as determined from time to time in terms of Chapter 14.'

Chapter 14 of the EC Act and, in particular, section 83(3) (a), provides that the Universal Service and Access Agency of South Africa (USAASA) must, from time to time, after obtaining public participation to the greatest degree practicable, make recommendations to enable the Minister of Communications (Minister) to determine what constitutes –
• universal access by all areas and communities to electronic communications services (ECS) and electronic communications network services (ECNS); and
• universal provision for all persons of ECS and access to ECNS.

These determinations address what is universal access and universal service in the South African context from time to time. This proceeding is conducted in terms of section 88(3) (a) of the EC Act.

In this proceeding, USAASA also has investigated the definition of under-serviced areas, which must be determined by the Independent Communications Authority of South Africa (ICASA) in regulations in terms of section 88(2) of the EC Act, and the designation of needy persons is within the discretion of the Minister in terms of section 88(4) of the EC Act. These determinations begin to address how universal service and universal access will be achieved in South Africa.

In this Position Paper and Recommendations, in the last chapter, USAASA advises the Minister and ICASA on these matters. It must be remembered that the Minister and ICASA will make the ultimate determinations in terms of the EC Act. USAASA is not aware of the specific processes or time frames that will be followed by the Minister and ICASA, but points out that it will endeavor in terms of its mandate to assist those entities in finalising their processes.

This Proceeding

Steering Committee

This process is an initiative of the USAASA. However, to facilitate collaborative thinking on the issues at hand, USAASA established a Steering Committee, which comprises representatives not only from USAASA, but also from the Department

of Communications (DOC), Independent Communications Authority of South Africa (ICASA), and the Media Development and Diversity Agency (MDDA). Also on the Steering Committee are the team of consultants contracted by the Agency for this matter, namely, Tertia Smit of BMI-TechKnowledge, Lisa Thornton and Kerron Edmunson.

Discussion Paper

Following extensive research on, inter alia, best practices around the world, and a review of the history of universal service and access in South Africa, including discussions and informal consultations with industry players, in August 2008, USAASA published a Discussion Paper in Notice 987 of 2008 in Government Gazette 31333 dated 15 August 2008. In the Discussion Paper, USAASA set out a number of questions and proposed definitions, asking the public to comment. USAASA extended the due date for comments to 7 November 2008 by Notice 1208 published in Government Gazette 31456 dated 26 September 2008. A list of the persons who responded is provided in Appendix 2.

Draft Position Paper and Consultative Workshop

In March 2009, USAASA published a Draft Position Paper and Invitation to a Consultative Workshop, which included refined draft definitions, in Notice 319 of

2009, Government Gazette 32048 dated 20 March 2009. USAASA invited the public to attend a public consultative workshop to discuss the draft definitions, enabling interested parties to consider and discuss with USAASA the revised definitions or provide further comment as necessary. A list of the persons that attended the workshop is provided in Appendix 3. Antelope Consulting and Cell C also made oral presentations at the workshop.

This Position Paper and Recommendations

This Position Paper and Recommendations follows extensive research and consultation and is intended to contribute to the eventual, and hopefully speedy determinations that are to be made by the Minister and ICASA in furtherance of the goals of universal access and universal service. There are some key points to note about this process.

1.For ease of reference, a list of acronyms used in this document is set out in Appendix 1.

2.The purpose of defining universal access and universal service is to inform the policies, regulations and programmes developed by the Minister, ICASA and USAASA to facilitate the achievement of universal access and universal service. Defining the concepts is not an end in itself; it is only a first step. The purpose of defining "under-serviced areas" and "needy persons" is more specific and should follow the definitions of universal access and universal service. These

definitions will likely lead to a list of under-serviced areas potentially eligible for payments from the Universal Service and Access Fund (USAF), and a determination of the types of needy persons to whom USAF assistance may be provided.

3.The targets that are suggested to accompany the definitions of universal access and universal service are not the same as obligations that will be placed on individual licensees by ICASA in terms of section 8(4) of the EC Act. Furthermore, targets are applicable for a certain period; the Agency proposes two years or until such time as the targets are reviewed. Targets establish goals and priorities for the industry with no specific consequence for licensees if the targets are not met. The imposition of licensee obligations is not the subject of this proceeding.

4.In addition to the issue of licence obligations, there are a number of other issues not covered within this process, which are set out here for ease of reference. These issues will be or are already being addressed in separate processes:

- the provision of subsidies to certain schools and further education and training institutions for the procurement of broadcasting services (BS), ECS and access to ECNS;

- the establishment and operation of BS and community access centres where access to ECNS may be obtained;

- competitive tenders for universal service and access projects provided for in section 90 of the EC Act;

- the general process of awarding subsidies out of the USAF;

- the E-rate provided for in section 73 of the EC Act;

- the imposition of universal service and universal access obligations placed on licensees in terms of section 8(4) of the EC Act; and

- Regulations relating to contributions to the USAF in terms of section 89 of the EC Act.

5.Also not included in this proceeding, although USAASA understands the importance of these issues to the achievement of universal access and universal service, are issues such as quality of service, interconnection and facilities leasing, local loop unbundling, numbering and number portability, carrier pre-selection, rights of way, licensing and spectrum allocation, content and programming, and other regulatory issues that are important for universal access and service.

6.   The EC Act is not as clear as it should be in certain instances. Therefore, it is likely that recommendations will be made for changes to the EC Act in due course. In terms of section 82(4) (g) of the EC Act, the Agency is obliged to continually evaluate the effectiveness of the EC Act and things done in terms thereof to help achieve the goals of universal access and universal service. However, these recommendations are not included in this proceeding.

7.   Finally, while the Agency has, as part of this Position Paper, decided to discuss some of the submissions made to it throughout the process, it has not referred to every point made. The absence of any one or more points made in this Position Paper does not mean that each of the submissions has not been carefully considered by USAASA.

2. DISCUSSION OF REPRESENTATIONS MADE

General points made

Some respondents made the point that a market study is required before definitions can be finalised. Vodacom explained that the study would determine

where and how the market had contributed to or failed to deliver services to consumers. Only once the "access gap" had been determined in this way, would it be possible to ascertain what regulation might be required. Only once competitive forces have reached the "high water" mark can the Agency consider universal service regulation to achieve a specific social goal. Telkom was also of the view that a feasibility study would be required to define consumer demand and technical feasibility, taking into account the growing diversity of technologies and their capabilities. USAASA is not aware of this approach being taken in general, where similar countries in terms of development face the sort of access and take up difficulties that we face in South Africa. Also, the Agency does not consider that a study of consumer demand is a prerequisite to defining universal access and universal service. In any case, a considerable amount of relevant survey material is already available and has been taken into account. Accordingly, no further study will be undertaken at this point. A market review will be carried out by USAASA in terms of section 82(4)(c) of the EC Act once the basic principles of universal access and universal service have been determined as provided for under the EC Act.

The MDDA, NAB and other respondents made useful contributions to the Agency's understanding of the concepts of universal service within the context of BS. The NAB made the point that there are likely to be fundamental difficulties with the application of the concepts to BS in that laws require that BS goes beyond affordability to ideas such as pluralism, diversity in providers and content, providing local content and prohibiting harmful content. In addition, BS laws often have coverage restrictions and requirements without conditions

regarding access. USAASA has been aware of these points in the approach to BS. It is likely that definitions will require further review as convergence takes hold.

Many of the respondents pointed out that although there is almost 95 percent geographic coverage of South Africa in respect of ECNS, the penetration or actual use of services is less successful. Therefore, the challenge is how to make services accessible and affordable (in addition to those services being available). USAASA agrees with these assessments and has therefore made alteration to the suggested definitions.

Some respondents made the point that content and application development, and the knowledge about and ability to use a service is as important as availability of infrastructure. USAASA agrees with this assessment. However, the definitions of universal access and universal service do not appropriately lend themselves to including these issues. So, there is no universal access to content, applications, or training on how to use a service included within the proposed definitions at this time. That said, USAASA sees as part of its role the facilitation of universal access and universal service in terms of its mandate as set out in the EC Act. Therefore, USAASA will be exploring ways in which to encourage and facilitate the development of applications and content as well as facilitate the use of services. This might include studies of access demand and readiness within

communities for broadband or digital migration. USAASA may also use its resources to facilitate the rollout of commercial services by identifying or creating demand in areas previously considered by licensees to be uneconomical.

Like other respondents to the consultative process on the definitions, the South African Post Office supports the view to come up with proposed definitions to bring ICT services to the marginalized communities. It is the view of the South African Post Office that universal service must promote availability, accessibility and affordability of quality basic services to all consumers. As the public institution that is at the forefront to deliver services to outlying and marginalized communities, the South African Post Office emphasized the extreme importance attached to the definition of universal service.

Finally, USAASA received quite contrary views on whether to include broadband services within the ambit of universal access and universal service. Some respondents were silent on this; others supported its inclusion in the future, but not right now. In yet other responses, it was argued that if convergence is the ultimate goal, then broadband services follow naturally. USAASA's view is that including broadband may be premature from a practical point of view, but as it is a national priority, it is addressed within the definitions in a flexible way.

SUBMISSIONS

Comments regarding the definition of Universal Service

The EC Act defines universal service as "the universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14."

Section 82(3) (a) (ii) of Chapter 14 mandates the Agency to make recommendations to the Minister on the definition of universal service after obtaining public participation to the greatest degree practicable

In response to the above, and to inform the Discussion Document published on 15 August 2008 on Government Gazette No. 31333, the Agency has done considerable research and comparative analysis on the policies and programmes adopted by other countries to achieve universal service, and also recorded the experiences of those countries in implementing the programmes. These experiences were compared to that of South Africa to find common ground and to inform the current consultative process.

Having looked at the history of South Africa and how the ICT sector has evolved to address universal service and access issues, especially issues of availability,

accessibility and affordability of ICT services, the following definition of universal service was proposed in the Discussion Document:

The proposed definition of universal service in the Discussion Paper

"A reliable connection from any part of the country, to a defined minimum set of ECS and BS, at an affordable rate, regardless of geographic location including no less than voice, data and broadcasting services."

The proposed targets were:

- For broadcasting, that every household and public access point with a television should be able to receive the service of a sound and television news station in at least English and one other relevant SA local language;

- For voice services, that every household has access to a reliable connection in the household; and

- For data services, that every household that demands it has access to reliable Internet services.

Distributed throughout this Position Paper are the questions relevant to the proposed definition, as these were posed in the Discussion Paper. Summarised underneath the questions are the relevant responses.

Questions 1 and 2: Do you agree with the proposed definition and targets? If no, what should these proposals be replaced by?

Question 3: What constitutes universal service, with reference to the definition of universal service and section 82(3) (a) (ii) of the EC Act?

Questions 4 and 5: What would be considered a minimum set of services in relation to ECS and BS?

Question 6: Does universal service still mean the provision of only voice telephones? There are a wide range of other services now such as digital lines, tone dialing, broadband, fax/modem capacity, operator services, directory enquiries, CLI, emergency services, itemized billing, call forwarding, multi-party lines and voicemail. Does the scope of all the services need to be defined in this process?

Question 7: How can the concept of universal service be defined in a converged environment that would be ideal for the local context?

According to Antelope, universal service in relation to voice should constitute a voice telephony connection being available within the household, at rates which enable household members to acquire a handset once in two years, receive unlimited calls and make a limited number of calls (to be defined, say 30 3-minute calls a month) for an outlay not exceeding 5 percent of the household's total expenditure. The connection should include at no extra charge the ability

to make emergency calls, specified features currently offered in the local market that improve affordability and any special features like CLI that are normally included in services used by 50 percent or more of the whole customer base. Service reliability and quality must be made available to "normal commercial standards".

Data, according to Antelope, should comprise a narrowband (56 kbps or similar) Internet connection being available within the household, at rates which permit limited use (say 10 hours per month) for an outlay not exceeding 5 percent of the household's total expenditure; and a broadband (256 kbps or similar) connection being available within the household at rates which permit limited use (say 2 GB per month) for an outlay not exceeding 10 percent of the household's total expenditure.

Annual targets should be set according to where offerings of each kind are available together with the proportion of households in the localities for whom the offering would be affordable on these criteria. Targets, say Antelope, should be set over 2, 4 and 6 years given household penetration at the time, available resources, public aspirations and important and conflicting priorities, and should be set further by balancing what is desirable with what is practicable.

In relation to over-the-air broadcasting Antelope suggest that the programmes and services in a locality are the same for all.

BIQ recommended a minimum set which it suggested should be "a reliable connection to voice and Internet services" and for broadcasting, access to sound and TV including news and educational programming in a preferred language. BIQ did not feel it necessary define all the services within a minimum set and recommended against distinguishing between voice and data in converged environment. It recommended that targets be reviewed every 3-5 years, and take into account current access to a minimum defined set of services before adopting additional targets.

In MWeb's view it is premature to include availability levels, and the Agency should look to Brazil and India, where they focused on access as opposed to the presence of a reliable connection. MWeb suggested that the definition might read "access from any part of the country, to a defined minimum set of ECS (including voice and data) and BS at an affordable rate regardless of geographic location". The minimum target for voice should be limited to basic telephony and mobile telephony as VOIP will be too expensive. Minimum data targets should include SMS, MMS, CSD, GPRS and HSCSD, and every household should have reasonable access to Internet services and other prescribed data services. In short, ECNS should be excluded as they are in the EC Act but new and advanced ICT services should be included once basic service targets are reached.

ECS, ECNS and BS within a minimum basket should be priced such that buying them is within the means of the public including low income population, according to MWeb, and the Agency should have regard to "actual needs".

The DOC proposals are important and seemed to go further than any other proposals made in their scope and implications. We note specifically the helpful suggestion from the DOC that the definition be amended to define availability to include "facilities, equipment and infrastructure" and accessibility to include "usability", but at this stage the adoption of the universal design principles included by the DOC with their submission would not be practicable. The Agency will remain mindful of these important issues however in future reviews of targets and in other projects and programmes that it undertakes.

The NAB suggested an amendment to the proposed definition to read "access to a defined minimum set of ECS and BS, free or at an affordable rate, regardless of geographic location" but required some clarification on the nature and type of BS to be included, particularly as between sound and TV as generally sound has higher penetration (because of the lower purchase price of radios). In relation to BS, the NAB proposed a new definition to read "every household and access point with a radio or TV set should be able to receive a TV or sound BS in at least English and one other relevant SA official language".

As far as targets were concerned, the NAB recommended that basic BS penetration levels be secured before considering any extension of targets to new BS including BS data services.

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e.tv felt it was necessary to clarify the definition to refer only to coverage not reception equipment, and to remove content and language references.

Smile redefined the proposal to read "a reliable personal connection, from any part of the country, to a defined minimum set of ECS, emergency services, basic voice, message and BS, at an affordable rate regardless of geographic location including not less than voice, data and BS".

Telkom suggested that universal service should not be defined at all, but that licensees should be incentivised to provide it, regardless of how it is defined. For this submission it relied on section 3(1) (e) of the EC Act dealing with national policy. It did offer a definition as being the efficient and cost-effective means of providing services perceived as universal services, to households, including voice calls, texts, narrowband Internet, and content distribution, and also suggested that disposable income play a role in determining the scope of universal service. In relation to targets, Telkom suggested a market study should determine the targets.

Although Vodacom agreed with the definition proposed, it suggested a different approach to universal service, by way of a test confirming whether the particular service is available to and used by a majority of consumers or whether the lack

of availability or nonuse by a minority results in social exclusion. In addition it asked whether availability and use conveys a general benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public through competitive commercial circumstances and then intervention in this case should be weighed against costs.

Vodacom further agrees with voice but not data targets for at least three years. This is because, they say, the high cost of bandwidth results in high costs to provide data services, and in any event, literacy levels are low. Targets should be set for universal access only in the short to medium term rather than universal service.

The SABC felt that universal service should be the sum of various services offered by licensees taking into account technology-neutral services – not every community will have access to the same services. The minimum set should be radio service in the most appropriate language of the community, as FM receivers are affordable compared to TV and radio is mobile.

The MDDA suggested that all households should have access to commercial, community and public BS, and that all district municipalities should have their own community television and radio service.

Neotel agreed broadly with the proposed definition but felt that the Agency needs to determine the meaning of words within it like "access", "public access point", and "reliable connection". Nonetheless, it proposed that every household should have access to the minimum set of services as defined. The minimum set for BS in their view is the availability of a signal and a footprint for PBS (sound and TV) in the preferred language of the recipient and pay TV must carry obligations for PBS, TV and radio. All services along with voice should be included in the minimum set, but not all services need be provided simultaneously.

The South African Post Office sees universal service as the provision of basic services (minimum set of services) to all persons of the national community who may require these basic services at an affordable rate and which are not discriminatory in terms of location, disability, race, gender, creed or physical ability.

K and P also requested further definition of "reliable connection" and "affordable rate" otherwise they felt they would tend to be applied subjectively. To determine the minimum set, they suggested the Agency have regard to what exists in relation to service types, then how these services link to national priorities. Basic services in k and P's view should include emergency services at no cost using voice and SMS, directory enquiries (DQ) for voice and SMS, access

for the disabled to products and equipment and services at no additional cost, incoming and outgoing calls permitted to emergency services, and specified grades of service. For data the criteria must include upload and download speeds and grades of service. For BS, the criteria must include availability of sound and TV, language and content (all subject to existing regulations).

They felt that targets should evolve, informed by international obligations, national priorities, sector-specific priorities and analyses of the ICT sector right now. Targets must be measurable, and encourage the deployment of relevant applications to contribute to growth and development and add value.

UNISA suggested that basic services are (i) basic connections – extending universal service of telecommunications to Internet services, email and in time, broadband in all technologies; (ii) public information and communications including government information, vital community information services and public BS; (iii) health information and communications including emergency services, health services for the disabled, sick and elderly; and (iv) compulsory education information – for primary, secondary schools and other public institutions offering literacy skills and non-formal learning.

Several respondents made the point that, not having a truly converged environment, it may be appropriate to take into account the ability of the public to use existing services, since this bears not only on what "basic services" are, but also on whether even where they exist, they can be used.

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Question 8: How should the concept of affordability be measured and addressed?

MWeb suggested that basic telephony should cost a household not more than 0.7% of income and that this statistic could be used to measure affordability. ECS, ECNS and BS within a minimum basket should then be priced such that buying them is within the means of the public including a low income population, having regard to actual needs. No further insight was forthcoming on how to determine these needs.

The DOC felt that affordability referred to household income disparities and personal circumstances and suggested in this regard that the USAF must benefit the elderly and vulnerable communities and disabled which we assume means that these categories should be considered when assessing affordability.

Smile recommended that affordability be measured in terms of the average ECS penetration rate for a particular service in a particular community.

Telkom suggested that USAASA be guided by other industries or sectors, such as the Department of Social Development, and consider the subsidisation programme being considered for digital migration.

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Vodacom suggested that affordability should be measured in the context of the definition of needy people.

Focusing only on broadcasting, the SABC stated that affordability relates more to ability to afford subscription fees than reception of free-to-air BS, except where subsidies will be provided for set top boxes in due course, from the government.

Neotel suggested that an open tender be used to assess affordability and usage must form part of that assessment. Otherwise it recommended using the definitions from the ITU for accessibility, availability and affordability.

K and P proposed a relatively complex approach, looking at the demand side for affordability which will require a comprehensive poverty study to determine levels of subsidisation required.

UNISA suggested three criteria to define affordability in South Africa – price of goods or services and disposable household income; the fact that prices are inflated (not related to cost); and that communications are not a luxury any longer – finance should not be a prohibiting factor.

Question 9: What is the significance, if any, of no mention of ECNS in the definition of universal service in the EC Act?

Some respondents suggested that ECNS may be a wholesale concept so therefore it was omitted from the EC Act definition. Vodacom took this further by

saying that ECNS was nevertheless a requirement to provide service therefore universal access must precede universal service. Telkom submitted that USAASA should consider the way in which operators might be incentivised to roll out services in rural areas.

Question 10: What is the significance, if any, of no mention of BS in section 82(3) (a) (ii) of the EC Act?

e.tv suggested that universal access is access to the signal that is broadcast on the ECNS signal, not language or content, hence BS was omitted in section 82.

SABC suggested that as ECNS relate to access, ECS and BS relate to content. BS was, in the opinion of the SABC, omitted unintentionally from section 82(3).

Question 11: How should the Authority from time to time determine the minimum set in order to give effect to the definition through regulation?

Antelope suggests that reasonable criteria for including a feature may be take-up by over 50 percent of the existing customer base. Antelope suggests further that as we do not have a converged environment yet, it may be appropriate to

think of peoples' communications capabilities rather than specific ECS and allow them to choose to suit their capability.

Vodacom felt that only where the market will not deliver should the Agency identify and apply appropriate intervention to address needs of excluded groups, taking into account factors such as size of the excluded group and cost benefit analysis of measures. The minimum set of services should therefore not include emergency services because there is a legal obligation to provide these in any event.

NAB stated that it was premature to consider a minimum service basket until digital migration is complete.

Telkom suggested that the Agency consider the types of services that a village might require and be able to afford and in doing so, it should conduct qualitative and quantitative research, consult international benchmarking, and ensure that sufficient capacity exists across the industry to roll out the minimum set of services to under-served areas.

UNISA suggested that Internet services should be included in universal service.

Smile recommended that basic voice and messaging should be included within the minimum set of services, together with a minimum BS set. Basic services should therefore include emergency services, voice, messaging and voice mail –

broadband might be included later when its definition is more clear and as convergence takes hold.

Question 12: What are innovative methods and mechanisms to deliver affordable universal service that can be considered by the Agency?

MWeb suggested in relation to broadcasting, that local content obligations should help bridge the digital divide through quotas, should be friendly to low literacy groups, and relevant to the community; and suggested that the Agency look to the MDDA to help. It also felt that the Agency could have regard to relevant case studies, expend sufficient resources, use flexible services and billing, and enable consumers to control costs through prepaid tariffs.

The NAB made the point that the Agency has no power to make recommendations to the Minister in relation to universal provision of BS under section 82(3) (a) (ii).

Smile suggested that asymmetric interconnection might lower prices, increase affordability and improve service.

Vodacom commented that ICASA has an enforcement role not a determination role other than where the Agency makes recommendations, for example regarding the minimum set.

Neotel recommended that the Agency assess the access deficit with regard to the metrics of affordability rather than numbers underlying penetration rates, create incentives for operators and have regard to the use of infrastructure-sharing.

Telkom recommended that USAASA consider community interest programmes such as an ICT franchise, co-operatives, and participation in shared revenue models or social projects to ensure awareness of the advantages of ICTs. Community ownership would assist, in its view, in preventing the theft of cables and network sabotage. Pricing models to accommodate needy persons should also be considered.

The DOC suggested that the minimum set should not refer to sound BS or to English, but rather to the DOC's universal design document and other services like AV, closed and captioning services, subtitling, and for persons not only deaf but in noisy public places where important information must be transmitted during emergencies. It also referred the Agency to the Convention on Rights of Persons with Disabilities (articles 9, 21 and 11).

The submissions received and integrated above necessitated a revision of the initial proposed definition of universal service and its targets as per the Discussion Document to the following:

The revised definition of universal service in the Draft Position Paper

• "Universal service for ECS is provided where all persons if they require it, are able to access ECS (which includes voice and data ECS and in the case of data, which includes an Internet connection) as set out in the targets, and access to emergency services using free calls and messaging, where all services are offered on a non-discriminatory basis and by way of a reliable, affordable, quality connection to an ECN."

• "Universal service for BS is provided where all persons if they require it, are able to access television and sound BS as defined in the targets, offered on a non-discriminatory basis and by way of a reliable, affordable, quality connection to an ECN."

The targets for universal service were set out as follows.

• For ECS, that every household has affordable access on demand.

- For BS, that every household in a given geographic area should be able to receive the entire BS licensed to be provided in that area.

Comments regarding the definition of Universal Access

The EC Act defines universal access as "universal access to electronic communications network services, electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14."

Section 82(30(a) (i) of Chapter 14 mandates the Agency to make recommendations to the Minister on the definition of universal access after obtaining public participation to the greatest degree practicable

A comparative analysis informed by research on the policies and programmes to address universal access in other countries was done. The findings of these comparative studies were compared to the South African situation and the findings confirmed the general view that there is still a considerable work that needs to be done in South Africa to address universal access to ICT services. Considering all those findings the following definition and targets were proposed in the Discussion Document:

The proposed definition of universal access in the Discussion Paper

"Universal access means that every person, within their area, has reasonable (in terms of distance) and affordable access to publicly available ECNS, ECS and BS on a non-discriminatory basis."

The suggested universal access targets according to each type of access were:

For broadcasting, the target is that each district municipality was:
• A community radio in their preferred language;
• A public sound broadcasting service in their preferred language; and
• A public broadcasting television channel of their preference.

For voice the target was:
• 100% quality geographical coverage; and
• The access to telephony should be within one km in rural areas and 500m in urban areas.

For data, the target was that a public broadband Internet access point should be available per municipal ward, or per population of greater than 20,000.

Questions 13 and 14: Do you agree with the proposed definition of universal access and the targets proposed? If no, what should it be replaced by?

Antelope suggested that publicly accessible voice telephony means the facility to make and receive phone calls, at a convenient place in the community with appropriate shelter at rates affordable to the poorest groups at least during normal waking hours. Publicly accessible Internet said Antelope, is the facility to use the Internet at a convenient place in the community with appropriate shelter at least during normal working hours, at rates affordable to the target user groups. Line speed and other aspects of service quality should, said Antelope, be of normal commercial standards (broadband for larger installations).

Targets should be determined, said most respondents, by a factor of distance and the number of people living in a community, meaning a group of people defined by similar characteristics, not only the geographic area they inhabit. Antelope suggested one phone per 100 inhabitants.

MWeb stated that targets for voice in the context of universal access should be coverage at 95 percent not 100 percent in a specified geographic area as this is realistic and practical to implement, but there should be no reference to quality until acceptable voice penetration levels are achieved. For data, a public broadband Internet access point should be available per municipal ward or 1/5,000 households.

The DOC went further to require public Internet access points per 10,000 population and services to cater for diverse needs of consumers.

Smile recommended that universal access means that every person, within their area, has reasonable (in terms of distance) and affordable access to publicly available ECNS, ECS and BS on a non-discriminatory basis. Furthermore, high network coverage does not mean high penetration – if access was affordable then coverage and penetration would be 100 percent and they are not. Targets for data should be defined in terms of population rather than municipality or ward.

Telkom considered this to mean that people have access to telecommunications networks through electronic communications service licensees. Furthermore they suggested that universal access would constitute the provision of service of the same quality to those in fully serviced and under-served areas. One hundred percent quality coverage would be ideal and should be strived for. Telkom felt that targets for data access were unrealistic and the phrase "broadband Internet access" should be clarified through a feasibility study. Other variables to be considered include population size, socioeconomic circumstances of an area, and the distance between dwellings and the availability of universally shared services such as pay phones.

The NAB disagreed with the definition as being too broad for BS and suggested that "universal access means that every person, within their geographical area has reasonable (in terms of distance) and affordable access to publicly available

ECNS and ECS as well as public and community BS on a non-discriminatory basis". It also felt it was not appropriate to include reference to preferred language or channel of preference, since language is specified by ICASA in licensing channels and channels are limited to coverage areas in the licence, so the target should simply specify that each district municipality should have access to a community sound BS and public TV and sound BS.

Vodacom suggested that the key focus of universal access is to provide greatest possible number of population with access to a basic communications set focusing on expansion of services to remote or high cost areas and low income groups (not economic to provide service there), and prioritise public access services. ECNS should not be included in universal access services as this is a wholesale service. The proposed wording is that universal access means that every person within their area has reasonable (in terms of distance) and affordable access to publicly available ECNS, ECS and BS and that every area and community has quality coverage of ECNS.

Vodacom felt that 100 percent coverage is unrealistic because there may not be people living everywhere and a community presence is needed to provide service. Therefore the target for voice should be not less than 80 percent quality population geographic coverage for all populated geographic areas, and for access to telephony within one km in rural areas and 500 m in urban areas.

The SABC suggested the definition be specific about the "area" and proposed that universal access means that every person within their geographical area (in

terms of distance) has affordable access to publicly available ECNS, ECS and BS on a non-discriminatory basis. Radio should be the most important target as it is prevalent in all areas and far-reaching for rural-urban divide, low cost, portable and widely accessible, and not dependent on electricity.

MDDA suggested that universal access should include as a target, access to commercial BS, taking account of their own goal of providing diverse content and language programming, and the time during which certain programmes are broadcast. They also suggested that "area" be referred to in terms of "province". In addition, the MDDA recommended that the definition include disabled people specifically.

Neotel supports the definition at an abstract level but feels that it needs to include socioeconomic factors like population size, source of income and electricity or alternative power, and definition of timelines for provision. Targets are acceptable but they should also be applied to universal service, and "quality coverage" is not clear as to meaning or standard in their view.

SAPO believes that universal service and universal access go hand in hand. It is their belief that universal access to basic services is made available to every person/s who may require the services at an affordable rate and which are not

discriminatory in terms of location, race, colour, gender or creed or physical ability.

K and P made the point that universal access is also public access, but the methods and targets to achieve this are specific to each country. Words such as "reasonable" and "affordable" aren't defined yet so k and P did not comment further. They recommended consistent use of service types or licence categories. Targets must be based on empirical data or national sector priorities.

UNISA suggested that access should be provided within all "areas" affordably where required. Distance should be less than one km especially in emergencies and the phones must be functional. Twenty thousand persons is too many in their view, since "most" have no access to telephony and ICT services.

Question 15: Are "areas" synonymous with "communities" as that term is used in section 82(3) (a) (i) or is there some other meaning to be attached to communities?

Antelope and other respondents stated that "communities" might mean similarly situated people not only by geography but characteristics, like deafness or other disability. The NAB suggested that "areas" are not the same as "communities" as "area" could mean a municipality, district or region, but a "community" is already defined in the EC Act to include sectors of common interest. Smile suggested that "community" includes a geographical area or group having

common interests and this, rather than "areas" should be the focus. In Vodacom's view, "area" is the same as "community". The SABC felt that "area" should be geographical. K and P suggested that areas are geographic and communities are groups of people with common characteristics, but including both may pose problems in ability to measure rollout. UNISA was of the view that "communities" includes local and national communities, but was not specific about areas. Telkom felt that an "area" was a space, whereas a "community" was a group of individuals who interact and share common characteristics. "Area" could also refer to a human settlement and the Municipal Systems Act defines a community in relation to a municipality, so they could be used interchangeably.

Question 16: How should access to BS be defined in relation to the concept of universal access?

Antelope suggested in relation to broadcasting, this would require access to a physical TV with at least one language per community available.

The DOC proposed a far-reaching definition, suggesting that TV design should cater for agreed minimum access standards taking account of the diverse needs of consumers including making available AV, sign language interpreters, closed and open captioning, subtitling for all programmes, and emergency services

available and also making it mandatory for all TV manufacturers to have inbuilt software to meet minimum standards including inclusively designed remote controls to ensure seamless navigation.

UNISA also suggested that access to BS should be in all official languages and other formats, with sign language for the deaf and large screens should be promoted.

The NAB did not agree with the definition as being too broad for BS and suggested that "universal access means that every person, within their geographical area has reasonable (in terms of distance) and affordable access to publicly available ECNS and ECS as well as public and community BS on a non-discriminatory basis". It also suggested that the target simply specify that each district municipality should have access to a community sound BS and public TV and sound BS. E.tv stated simply that access should refer to transmission not equipment.

Neotel remarked that they are not the same but had no further insight. Neotel's view was that PBS should be available everywhere to every person, and to this end ICASA must make spectrum available to all communities.

Question 17: Should access to BS include access in a language of choice?

The NAB felt it was not appropriate to include reference to preferred language or channel of preference, since language is specified by ICASA in licensing channels and channels are limited to coverage areas in the licence.

The SABC suggested the words "preferred language" should be replaced with the words "most relevant language".

Neotel felt that although language of choice may not be practical, it was an ideal standard.

Question 18: Does the proposed definition provide adequate measures to be able to monitor and evaluate universal access?
Respondents had no suggestions in this regard.

The revised proposed definition of universal access in the Draft Position Paper

"Universal access for ECS is provided where all the inhabitants of a relevant community are afforded convenient access (regardless of disability or other similar status) to a minimum set of quality ECNS and ECS including access over an ECN to ECS (which includes voice and data ECS and in the case of data, which includes an Internet connection), and access to emergency services using free calls and messaging."

"Universal access for BS is provided where all the inhabitants of a relevant community or geographic area as defined in the targets, are afforded convenient access (regardless of disability or other similar status) to a minimum set of quality BS including television and radio BS."

For purposes of the definition, "convenient" means that there should be at least one working public telephone (regardless of technology used) for every 2,000 inhabitants of any given geographic area, provided that the distance to be traveled to access voice ECS should be no more than one kilometre.

For voice ECS the target was availability to 100 percent of the population within the licensee's licensed coverage area, and 100 percent coverage of all mapped public roads, which is reliable.

For data ECS the target was at least one public broadband or public Internet access point (POP) for every geographic area inhabited by more than 20,000 people and a public Internet access centre accompanying the POP.

For BS, the targets, applicable for district municipality, were a community radio BS broadcasting in the most relevant language for that area; a public radio BS broadcasting in the most relevant language for that area; and a public or community television BS.

The following were set out as guidelines:

• Each access point should be housed in adequate shelter;

• Access should be provided at least 12 hours a day and during the hours of 08h00 to 17h00;

• Those persons who require assistance in using the community access point, the ECS and BS or the subscriber equipment (as defined in the EC Act) should be assisted to the extent practicable; and

• Access to ECS and BS must be provided at affordable rates to the majority of persons in the geographic area.

Comments regarding the definition of Under-serviced Areas

An Under-serviced Area in the EC Act means "the geographically identified areas defined by the Authority in accordance with this Act."

Section 88(2) of the EC Act mandates the Authority to, by regulation, for purposes of subsection (10(b), define under-serviced areas.

The EC Act mandates the Agency to provide advice to the Authority on issues of universal access and service as it does to the Minister of Communications. The

Agency has initiated the process of defining what an Under-serviced Area is, and once the process of consultation is complete, it will provide a proposed recommendation to the Authority on the definition on an Under-serviced Area.

Form the findings of the research done to inform the Discussion Document, there is very little literature review on this concept generally. The only country that has used the concept of Under-serviced Area is Malaysia, which has different socioeconomic dynamics that those of South Africa.

Having looked at the South African situation and the history of the programme of Under-serviced Area Licences, the finding was that the definition needs to be confined to an officially demarcated area being either a local municipality or district municipality which has certain levels of ICT access measured against the national average. The following revised definition of an Under-serviced Area and targets were proposed in the Discussion Document:

The proposed definition of under-serviced area in the Discussion Paper

"An under-serviced area is, as defined from time to time by the Agency, any municipal area or ward within a metropolitan municipality where the average

ECNS penetration rate of a particular service type is below the national average penetration rate."

The suggested target for the under-serviced area is that the yearly percentage growth rate of each of the service types grows by a greater magnitude than the national average's percentage growth of that service type.

Question 19: Do you agree with the proposed definition? If no, what should it be replaced by?

Antelope did not consider the Agency's proposed definition appropriate because under-serviced area should, it argues, relate to potential funding for infrastructure, not increasing penetration where infrastructure is adequate. Therefore it suggested the Agency look at the existence of infrastructure to determine if the area is under-serviced.

BIQ suggested changing national to provincial percentages to be used for growth rates and average income.

MWeb agreed with the definition but felt that the necessary infrastructure must be in place for the establishment of access to basic services. Therefore it will be

necessary to emphasise the rollout of ECNS to under-serviced areas then shift to provision of ECS.

The NAB considered that under-serviced areas will be defined by extent of clear signal coverage and access to and reception of at least one free-to-air BS. The MDDA suggested that an area be determined according to the Demarcation Act, and recommended also that "rural areas" be considered to be under-served.

Smile agreed that under-serviced should include areas where the average ECNS penetration of a particular service type is below the national average penetration rate and added that it should include any locality where, in the opinion of the Authority, services are not sufficiently affordable to the community at large (i.e., their emphasis and their recommendation is on affordability not availability).

Vodacom felt it was confusing to define the term with reference to "average communications network service penetration rate" when referring to particular service types. It suggested that the term be defined with reference to universal service and access in an area, and proposed that an under-serviced area be defined from time to time by the Authority, as any municipal area or ward where (i) the average ECNS coverage penetration rate of a particular service type is below 80 percent of the population of that area, (ii) voice service penetration level per household is less than 75 percent, (iii) on average, more than 10 percent of the population of that area has to travel more than one km to access public telephony, or (iv) there is no access to either a community radio, public sound broadcasting service or public television broadcasting service.

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Vodacom therefore felt that areas could be designated if and to the extent that their penetration rate is a percentage below the national average because there could be people in an area who choose not to use services and the purpose of intervention through universal service and access is to guarantee access to a minimum set of services where the market has failed to provide. It argues that the Agency should ensure that any potential for commercial service has been exhausted first.

The SABC supports the definition at an abstract level but felt that it needs to include socioeconomic factors like population size, source of income, availability of electricity or alternative power, and timelines. "Quality coverage" in their view was not clear as to meaning or standard.

Telkom agreed with the definition but not with the targets.

The South African Post Office view under-serviced areas .. to refer to municipal areas, wards, rural and informal settlements that do not have basic services.., as required by communities, and stipulated in the license.

UNISA felt that the definition is not adequate but that it might be useful to introduce the notion of asymmetric interconnection rates for under-serviced areas to ensure viability of operators within those areas.

Infraco recommended an amendment to the definition so that an under-serviced area is any municipal area where the average ECNS or ECS or BS penetration rate of a particular service type is 20 percent below the national average penetration rate. They also suggested that the actual under-serviced area definition in licenses should be particular to the service type offered by the licensee.

Question 20: Do you agree with the target as defined by growth rate? If not what do you suggest they should be? Is it correct that the focus in respect of under-serviced areas must (and should) be with regard to ECNS, as opposed to ECS and BS?

Antelope suggests that any future programme within the area should depend on overall priorities, available resources and local preferences and a balance should be struck between ECNS and BS. MWeb had a slightly different take on this and suggested that needs of areas differ so the Agency must assess needs per under-serviced area.

Smile felt the Agency should only focus on ECNS and BS as these are the only services able to get subsidies for construction and expansion of networks in under-served areas.

Telkom felt that growth rates should be determined by the capabilities of licensees and not the national growth rate.

Vodacom disagreed with targets with reference to a growth rate and submitted that targets for under-serviced areas should be determined with reference to targets prescribed for universal service and access.

Infraco recommended including BS and ECS in targets and felt that an area can be under-served if it is covered by one ECNS as long as there are insufficient BS and ECS in that area, or the ECNS monopoly affects price.

Questions 21 and 22: Can an area be considered under-serviced if it is completely covered by one ECNS, regardless of how many ECS and BS are being provided using that ECNS? Can an area be an under-serviced area for the purposes of providing BS but not for provided ECS and vice versa?

MWeb felt that an area could well be under-serviced if covered only by one ECNS.

Smile stated that "area" should mean urban and non-urban since under-served people live in both types of areas.

Telkom's view was that the number of ECNS in an area is immaterial, and that complete coverage by an ECNS would not guarantee provision of ECS or BS. Affordability and willingness of licensees to operate in under-serviced areas are also relevant factors. USAASA should explore the option of incentives in this regard.

Vodacom stated it was not correct that the focus in respect of under-serviced areas must be ECNS and not ECS and BS. They did however, also suggest that if quality of service of a single ECNS meets the ICASA standards or compares with similar areas and if ECS penetration levels are not below targets for universal service or access then the area is not an under-serviced area, but it would be conceivable that an area could be under-serviced for BS but not ECS, or vice versa.

UNISA suggested that an area could be a sub-place or bigger area.

Question 23: Is ICASA required to designate under-serviced areas as falling within its definition of under-serviced areas, and if so, would

this deny a licensee intending to provide service in an area not so designated the ability to access USAF funds?

The DOC stated that ICASA must designate under-serviced areas and licensees must provide services there. The Agency must identify services that qualify for assistance from the fund.

Smile stated that ICASA has to define this, not USAASA, and if this is legally possible given the wording of the EC Act, they would prefer and they recommend a review every two years. Smile felt that subsidies should be available if licensees provide services to needy persons regardless of where they live – so it would not be relevant if an area was under-serviced in relation to subsidies. Furthermore, Smile suggested that the ICASA apply asymmetric interconnection to enable access to persons providing service in under-serviced areas.

Vodacom felt strongly this was something only ICASA could define whereas k and P suggested that ICASA should define the term based on recommendations by USAASA, which is the approach the Agency has adopted.

Telkom suggested that USAASA provide the sector with a list of designated under-serviced areas and only licensees providing service within those areas should qualify for subsidies.

k and P also felt that there should be no automatic entitlement for operators providing services in an under-serviced area to receive subsidies as the fund is a mechanism for the state to intervene where the market cannot deliver, therefore there must be compliance by operators with the Agency's requirements, subsidisation policy and the priority focus areas.

UNISA suggested that the price of service and household income should determine whether an area is under-serviced. They also suggested that ICASA should not deny a person wishing to provide services to an area but regulate how they should be provided. Infraco felt that ICASA should designate areas so that the public knows which qualify for subsidies.

Question 24: Should the definition or designation of under-serviced areas be different in respect of sections 88 and 90, respectively?

MWeb stated that money in the fund can only be used to pay subsidies to licensees to finance construction or extension of networks in these areas only, and that the designation should be the same under sections 88(1)(b) and 90(1)(b).

The NAB confirmed that section 90 does not refer to BS, only to ECNS. Telkom suggested aligning the designation of areas with sections 88 and 90 to avoid loopholes and confusion.

Vodacom stated that the fund can apply only for designated under-serviced areas but an area could qualify under section 88 for a subsidy but not section 90 for an incentive. Infraco suggested keeping the same definition for both sections, so that licensees would be similarly treated for tenders.

Questions 25 and 26: What is meant by the term "areas" in section 82(3)(a)(i) of the EC Act – should the area be a district municipal geographic area, or should it be something smaller, such as a local municipality or ward as defined by StatsSA? Can under-serviced areas be defined by something other than ICT penetration rates, such as average household income or the number of persons from HDI backgrounds residing there?

Antelope suggested that areas should be as small as possible and that penetration should be a secondary criterion in identifying under-serviced areas.

BIQ agreed that areas should be small and reflect more than just ECNS penetration rates. The Agency should use a weighted index of different services in favour of Internet access according to BIQ, and appropriate international benchmarking or a multiple of the national average.

The NAB suggested that factors would include absolute levels of service relative to population density and economic strength, particularly poverty levels.

MWeb suggested "area" means district municipality or local municipality or ward as defined by StatsSA, and areas can be further defined by reference to ICT penetration rates in the main, excluding computers. In summary, the Agency should look to penetration below a certain percentage below the average penetration rate.

The DOC suggested that section 82(3)(a)(i) means small area, local authority or district. The DOC also suggested that household income should be considered as a factor.

Smile regarded penetration per ECS type as key, not coverage. Telkom felt that the presence of historically disadvantaged individuals on its own was not a sufficient indicator for purposes of the definition, as economically depressed areas were also inhabited by other groups. Telkom considered that an under-serviced area is an area where the majority of the population has no access to universally shared services because they cannot afford the cost of the communications, and sparse demographic distribution and hostile topographic features are also relevant. The disabled are also prejudiced as services may not be available to them when required.

Vodacom defined an area with reference to the StatsSA demarcation, requiring the coverage percentage of ECNS according to a prescribed national minimum universal access target and stipulated target of households provided with and able to use a minimum set of ECS according to universal service targets. The average monthly household income and number of HDI in an area are not relevant if they do not affect a household or individual's ability to obtain and use the minimum set of services, they are not themselves criteria to determine whether a particular area should be classified as under-serviced – ICT penetration rates are the key criteria for Vodacom. They suggest the Agency consider only those service types which fall within the scope of universal service and access in measuring penetration rates for purposes of determining under-serviced areas.

k and P questioned the use of metropolitan municipalities when there are only six and they are geographically limited and suggested that areas be defined with reference to universal access and service, so first the Agency should determine these definitions and targets, then assess access to infrastructure, services and ICT facilities in relation to the population generally, then identify areas based on findings, namely, gaps between defined area and the target in the definition. k and P did not find it helpful to use racial groupings, but rather focused on availability of products and services, and used income as a standard for needy people only.

Infraco was concerned that "area" should mean district municipality as it is larger than a local municipality. Factors such as average household income or number of persons from HDI residing there have influence on penetration rates and therefore on whether an area is under-serviced in Infraco's view. Measuring penetration should take account of access to voice, data and Internet services, not technology platforms.

Questions 27 and 28: Which service types should be considered when measuring penetration rates, cellphone, TV, radio, telephone, computer, Internet or a different combination of the parameters? Should an under-serviced area definition be any area below the national average penetration rate, or should it be a certain percentage below the average (eg in Malaysia it is 20% below the average penetration)?

Smile suggested the Agency look to affordability not availability, taking into account population size, the nature of people (defined by income and expenses) living in the area and not strictly whether an area is rural and urban, a township or a ward. The Agency should consider its goals for a particular area as this may make other forms of service irrelevant, for example, increasing TV may make cellphone penetration irrelevant. Then the Agency could give priority to augmenting services with a low penetration rate using public access devices like pay phones and messaging services to address gaps in the fixed line market, for example.

Telkom considered the appropriate percentage to be something below the national average and that a study would determine what this might be.

Infraco's view on penetration was that as in Malaysia, the Agency should use "at least 20% below the average penetration" and balance the result against the economic viability and financial sustainability of a business in that area, as operators cannot provide services below cost and if they are required to do so then they should be subsidised.

After considerable input by a broad spectrum of stakeholders in both written representations and in the public workshop held in May 2009, the following revised definition of an Under-serviced Area and targets are proposed:

The revised proposed definition of under-serviced area in the Draft Position Paper

"An under-serviced area for purposes of ECS, is any municipality or smaller geographic area as defined in any official publication in the Republic:
• in which no ECN has been constructed; or
• where an ECN has been constructed, but it does not or will not adequately cover the area; or

- where an ECN has been constructed, over which no or limited voice or data ECS are being provided."

"An under-serviced area for purposes of BS is any municipality or small geographic area as defined in any official publication in the Republic where an ECN has been constructed over which no or limited BS are being provided."

The following were set out as guidelines applicable to the determination to be made by ICASA.

An ECN will be presumed not to exist or to provide inadequate coverage if the targets for universal service and universal access have not been achieved.

Comments regarding the definition of Needy Persons

Section 88(1)(a) of the EC Act stipulates that the money in the Universal Service and Access Fund "must be utilised exclusively for the payment of subsidies…for the assistance of needy persons towards the cost of the provision to, or the use by, them of broadcasting and electronic communications services."

As the Agency responsible for disbursing funds to the needy persons, the Agency has initiated a process of defining needy persons and the categories thereof.

After public consultation the Agency will provide recommendations to the Minister. The Minister may, by notice in the Gazette determine –

- the types of needy persons to whom assistance may be given;

- the persons who must apply for assistance and the manner in which such applications must be made;

- the manner in which and persons to whom subsidies may be paid.

After looking at the socioeconomic conditions in the country and the experiences of its citizens in relation to ICTs, the following definition was proposed in the Discussion Document.

The proposed definition of needy persons in the Discussion Paper

'Needy person' is defined as a person who qualifies through the application of an agreed means test who cannot afford to obtain ECS or BS at commercial rates – for reasons of income, and other factors in relation to income, including geography, age, disability or other similar factors."

Question 29: Do you agree with the proposed definition? If no, what should it be replaced by?

Antelope accepted that this was a reasonable definition proposed but felt it might be hard to apply. They suggested that it might be defined as a "person assessed as in need of assistance with communications by an established organisation or institution set up for charitable or public service purposes". These bodies could use a means test and their own criteria to define worthy applicants.

BIQ suggested defining a needy person as a person, household or institution who earns below R800, or receives a social grant, including pensioners and the disabled.

MWeb agreed with the definition but suggested linking the means test to geography, age, and disability, and that applicants must also demonstrate that they are disadvantaged by this within a particular area.

The DOC agreed with the definition but wished to add "such as vulnerability", youth including children's care homes, elderly and old age homes, income disability vulnerability (like organisations looking after people in crisis situations and emergencies), geographic medical conditions and other special social needs to it.

The NAB proposed changes to the effect that a needy person is a person who qualifies through the application of an agreed means test, who cannot afford to obtain ECS and BS for reasons of income, and other factors in relation to income,

including geography, age, and disability. They did not feel it necessary to refer to commercial cost as this does not apply to BS and the unavailability of BS is not limited to funding, but could also be as a result of coverage since 9 percent of the population cannot receive analogue BS, and approximately 14 percent does not have access to sound BS. The NAB also stated that set top boxes required in future will be a barrier to poor people, although they recorded that the Minister has stated that a subsidy will apply, presumably from a different fund.

Telkom agreed with the definition.

e.tv did not agree with the definition as they also said BS is not provided at commercial rates.

Smile generally agrees with the definition but preferred to focus on individuals or households with a low income say below R15 per day regardless of location or community (the same as $2 a day used to define "Bottom of the Pyramid" consumers).

Neotel and the SABC agreed with the definition.

The South African Post Office agrees with the definition of needy persons, but further add that the definition must include personal circumstances like unemployment, poverty, disability, and social grant receivers.

k and P agreed in principle but felt the definition was not sufficiently clear as to the means test, and that ECS and BS should be reduced to basic services. They also commented that people may be needy for non-income based reasons for example, age, geography, or disability. Those who cannot access services defined as "basic" should be regarded as needy.

UNISA suggested that all those who cannot afford service in terms of low household income should be subsidised, and the price of the product should consider incomes.

Questions 30 and 31: Do you agree with needy persons being defined through the application of an agreed "means test"? If not, what do you suggest should be used to define needy persons? What criteria can the Agency consider in determining the "means test" – LSM, income or expenditure only, or also age, disability or other criteria?

Question 32: How should the Agency determine whether certain criteria have been met, e.g. use of an income test, household expenditure, LSM, social grant recipients?

BIQ felt that a means test should include proof of income and social assistance which is an easy way to determine need. The average household income could also be used.

MWeb suggested LSM, income and expenditure, social grants and demographic factors could be relevant.

The DOC suggested that the Agency devise criteria for qualification by all affected groups within guidelines and publish these in due course.

The NAB suggested that a means test should apply to those who are financially indigent, but this would be likely to marginalise the needs of the disabled and geographically disadvantaged so any test should take this into account. They suggested that the Department of Social Development and pensions, and local and provincial government could give insight on this issue.

Smile recommended that a means test should be agreed on in the definition to ensure consistency, for example R15 a day. They also suggested looking at the percentage of income used to fund basic services, include disability and age and other such objective criteria.

Telkom suggested that income, expenditure and disability are all variables that, in its view, might be relevant in determining a means test.

Vodacom suggested that a person applying for a subsidy must meet at least more than one criterion (say four out of six of the criteria determined for the means test) to be able to qualify, and must still meet the means test even if they are old and live in an under-serviced area. The means test should use broad but stringent criteria to include all marginal, vulnerable, remote and low-income subscribers including the elderly and disabled but the Agency should nonetheless ensure that no unreasonable burden is placed on public resources and prevent undue abuse of the fund. Vodacom also suggested liaising with the Department of Social Development or the SA Social Security Agency.

k and P questioned what was meant by a means test and offered criteria including income and LSM, disability, age, life expectancy and eligibility for government assistance or grants as being criteria that are easy to measure.

Questions 33 to 37: Who should be able to apply (needy individuals and/or other people on behalf of needy persons such as licensees or representative entities and/or needy communities) for subsidies? What should the process be for awarding subsidies to or on behalf of needy persons? Should the subsidies be once-off for equipment or monthly for access to services? Should the Agency consider handset subsidies for persons with disabilities now or be considered on the next review of the definition for needy persons? In what manner should the subsidies be paid?

BIQ stated that subsidies might be given to communities as well as licensees but that agency was not appropriate in relation to paying or applying for subsidies. However, subsidies should be paid to the service provider.

Antelope suggested that the Agency work through existing organisations and institutions that serve needy persons directly, for example, homes for the elderly or disabled. Those organisations in their view can apply for assistance and must demonstrate good standing and a plan, for example, providing facilities at the home or centre, mobile communications facilities, freephone advice services, and personal calling allowances.

MWeb suggested that applications be made in person in writing, on a comprehensive application form with relevant documentary evidence to support ID, economic status and demographics. They also recommended a fairly long process for consideration of the application, and the monitoring of the applicant's status to withdraw the subsidy if circumstances change. Subsidies should in their view, apply to both services and equipment but the Agency should first assess the results of implementation of the ICASA code of conduct within the market for the disabled before giving subsidies for handsets. Finally they suggested that subsidies be paid as prepaid vouchers to avoid fraud.

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The DOC stated that subsidies will be continuous depending on equipment provided and maintenance must be paid for too. Subsidies should in their view, be paid to service providers.

The NAB suggested that all qualifying persons should receive subsidies and the Agency should make subsidies for set top boxes and remote controls for people with disabilities available as a once-off payment.

Vodacom suggested subsidies be paid to licensees. Telkom considered that means tests might also consider those with a power of attorney, on welfare, child-headed families, guardians and needy persons themselves when awarding the funds. USAASA should, however, in its view develop stringent measures to curb fraud. It recommended the use of coupons, paying licensees as agents and looking to international models such as in Australia for ideas. Subsidies should be once-off for equipment, direct to manufacturers through discounts at factory level. Software such as voice-recognition software should be a priority.

Smile recommended that ECS and ECNS licensees apply for subsidies on behalf of needy persons but these must go directly to the identified persons to enable them to access the services. The process should be agreed in future and published, linked to a special dispensation for projects within low income markets to facilitate affordable provision of services to those target markets. Projects might include subsidies for services or equipment, depending on the gap identified, and perhaps handset subsidies.

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Neotel suggested that affected persons apply directly for subsidies but that service providers can apply too on behalf of customers meeting the means test criteria, or their representatives can apply. Vouchers should be given to customers or direct payments made to service providers to ensure payment is used properly. Subsidies should, in Neotel's view, be made once-off for equipment and ongoing for services, monthly or annually depending on the applicable pattern of use.

k and P felt that disbursement of subsidies would depend on how USAASA manages the fund – payment to individuals may be more difficult to administer. Once-off payments might be made for equipment or subscription fees as these could be considered to be one single barrier to entry, but they might need to be ongoing for age, disability or more permanent factors like no income.

UNISA suggested that ICASA monitor prices to satisfy all users. They suggested that other persons can apply for needy persons on an agency basis if needy persons themselves cannot do so, with their permission, but that application criterion to be met and criteria to meet relevant socioeconomic conditions should be applied by the Agency.

Inputs from the consultation process necessitated the Agency to revise the proposed definition of "needy persons in the Draft Position Paper as follows:

The revised proposed definition of needy persons in the Draft Position Paper

'Needy persons' are persons who qualify through the application of a means test:

• devised by the Agency; or

• devised by one or more public services organisations or institutions, which organisations or institutions are selected for this purpose by the Agency.

In both cases the means test must take account of the person's inability to access ECS because, for example, that person falls below the poverty line (when this study has been published finally), or similar measure of factors including age, disability or other vulnerabilities.

3.   PROPOSED RECOMMENDATIONS ON DEFINITIONS

Having considered the context and history, international precedent, responses to the Discussion Paper and further representations made at the consultative workshop, in light of the mandate of the Agency, the following proposals are made.

Universal Access

Universal access is defined in the EC Act as "universal access to electronic communications network services, electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14".

Chapter 14, and specifically section 82(3)(a)(i) provides that the Agency must make recommendations to enable the Minster to determine what constitutes "universal access by all areas and communities in the Republic to electronic communications services and electronic communications network services".

"Community" is defined in the EC Act as including "a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest".

Generally, universal access means that everyone in a community can gain access to a publicly available ECNS, ECS (and BS), although not necessarily in their homes. Universal service, by contrast, means that every individual household or person can gain access to defined services within these categories.

Proposed definition of Universal Access

"**Universal access** is provided where all persons (regardless of disability, age or other vulnerability) in all areas and communities are able to obtain quality, affordable access to a publicly available minimum set of quality:

• ECNS and ECS (which includes voice, messaging and data ECS and in the case of data, which includes an Internet connection), and access to emergency services using free calls and messaging; and

• BS including television and sound BS."

The following **universal access targets** apply for a maximum of two years or until revised (whichever comes first):

For **voice ECS** the targets are:

• *at least one working public telephone at a public access point (regardless of technology used) in a geographically founded community of up to 2,000*

persons, and an additional such telephone for every additional 2 000 inhabitants of the community, if the community desires it, and

• The distance to be travelled from home by persons residing in the community to access voice ECS at a public access point should be no more than one kilometre.

For **data ECS** the targets are:

– at least one public basic broadband Internet access point in a geographically founded community of up to 10,000 persons, and if the population of the community is 10 000 or more, then at least one public broadband access point for every 10,000 persons in that community or part thereof and

– The distance to be travelled from home by persons residing in the community to access data ECS at a public access point should be no more than two kilometres.

"Basic broadband is an always available connection that supports multimedia services, including Internet access with a downstream access speed of at least 256 kbps."

For **BS**, the targets are:

- For each district municipality, access to at least one community radio BS-broadcasting in the most relevant languages for that community;
- For each district municipality, access to all public radio BS broadcasting in the most relevant languages for that community; and
- For each district municipalities, access to all public television BS
- For each province, access to at least one community television BS.

The following **additional universal access targets**, relating to public access points, are applicable targets in respect of ECS.

- Each public access point for ECS should be housed in an adequate shelter.
- Access at a public access point should be provided for a minimum of 12 hours a day and at least during the hours of 08h00 to 18h00.
- Those persons who need assistance in using the public access point or any subscriber equipment should be assisted to the extent practicable.
- Access to ECS at public access points must be provided at affordable rates.

Universal Service

Universal service is defined in the EC Act as "universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14".

Chapter 14, and specifically section 82(3)(a)(ii), provides that the Agency must make recommendations to enable the Minster to determine what constitutes "the universal provision for all persons in the Republic of electronic communications services and access to electronic communications networks, including any elements or attributes thereof".

"Person" is defined in the EC Act as "a natural or a juristic person".

Generally, universal service means that every person can gain access to ECNS, ECS and BS individually. Universal access, by contrast, means that everyone in a given community can gain access to a publicly available ECNS, ECS (and BS).

Proposed definition for Universal Service

Universal Service for ECS

- – is provided where all persons if they desire it, are able to obtain quality, affordable access to a minimum set of ECNS and ECS, on either a household or individual basis (which includes voice and data ECS and in the case of data, which includes an Internet connection), and access to

emergency services using free calls and messaging, where all services are offered on a non-discriminatory basis (regardless of disability, age or other vulnerability).

– For the purposes of this definition, affordable means at a rate (including connection and usage charges, but not subscriber equipment charges) that does not exceed a defined percentage of a household's total expenditure."

"**Universal Service for BS:**

– Is provided where all persons have access to a diverse range of television and sound BS (in terms of three categories of BS) that cater for all language and cultural groups and which provide entertainment, education and information.

The following **universal service targets** apply for a maximum of two years or until revised (whichever comes first):

For **voice ECS**:

– Service is available to 95 percent of households on demand.
– Service is affordable to 90 percent of households, and

In respect of affordability- each household or individual shall not outlay no more than 5% of the total expenditure for voice ECS. Such services shall consist of a

minimum of 90 minutes calling time per month of which no less than 30 minutes are within peak calling rate periods.

For **data ECS**:

- Service is available to 90 percent of households on demand where such service includes access to the Internet as a minimum.
- Service is affordable to 60 percent of households, and in respect of affordability, for an outlay not exceeding five percent of the household's total expenditure…
- A household should be able to use the Internet in a month, for at least 20 hours (of which no less than 10 hours are within peak calling rate periods) OR
- the amount of data that may be consumed shall be at least 200MB

For BS:

- All official languages should be catered for in both sound and television BS including public, community and commercial when viewed collectively.
- Increase local content by 10% more than the prescribed minimum requirements in the local content regulations.

For the purposes of these targets, the term household has the same meaning as it has when it is used by StatsSA.

Under-serviced Areas

An "under-serviced area" is defined in the EC Act as "the geographically identified areas defined by the Authority in accordance with this Act".

Section 88(1) of the EC Act provides that money in the USAF may be used for the payment of subsidies to, among others, "any broadcasting service licensee and electronic communications network service licensee for the purpose of financing the construction or extension of electronic communications networks in under-serviced areas as prescribed". Section 88(2) provides that ICASA must define under-serviced areas for the purposes of section 88(1). Section 88(3) provides that the prescribed definition of under-serviced area and the list of designated under-serviced areas eligible for construction payments from the USAF must be reviewed at least biannually.

Thus, ICASA must define "under-serviced area" and designate certain areas eligible for construction payments from the USAF.

The recommendation made herein to ICASA is only that - a recommendation - and it is about the definition of "under-serviced area" only. ICASA will, in turn, have to follow the regulation-making process set out in section 4 of the EC Act not only to define under-serviced area but also to designate certain areas eligible for construction payments from the USAF.

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In addition, the Agency must still develop procedures for applying for subsidies and criteria for awarding subsidies from the USAF, and it will likely be that licensees wanting to access funds to provide service in under-serviced areas and to needy persons, will have to compete for USAF funds (as the fund amount is not limitless).

Proposed definition for Under-serviced Area

"An **under-serviced area for purposes of ECS**, is any local municipality or smaller geographic area as defined by the Municipal Demarcation Board:

• in which no ECN has been constructed; or
• in which an ECN has been constructed, but it does not as determined by the Authority, adequately cover the inhabited parts of the area; or
• in which an ECN has been constructed, but over which no or, as determined by the Authority, limited ECS are being provided."

"An **under-serviced area for purposes of BS**, is any local municipality or smaller geographic area as defined by the Municipal Demarcation Board:

• in which no ECN has been constructed; or

- in which an ECN has been constructed, but it does not adequately cover the inhabited area, as determined by the Authority; or

- in which an ECN has been constructed, but over which no or limited BS are being provided, as determined by the Authority."

For purposes of this definition, it will be indicative that an area will be likely to fall within the definition in respect of ECS if, in the area, the targets for universal access have not been achieved - in other words if -

For **voice ECS** -

- at least one working public telephone at a public access point (regardless of technology used) in a geographically founded community of up to 2,000 persons, if the community desires it, and an additional such telephone for every additional 2 000 inhabitants of the community, if the community desires it, and

- The distance to be travelled from home by persons residing in the community to access voice ECS at a public access point should be no more than one kilometre.

For **data ECS-**

- At least one public broadband Internet access point in a geographically founded community of up to 10,000 persons, and if the population of the community is 10 000 or more, then at least one public broadband access point for every 10,000 persons in that community or part thereof and

- The distance to be travelled from home by persons residing in the community to access voice ECS at a public access point should be no more than two kilometres.

For **BS-**

- For each district municipality, access to at least one community radio BS-broadcasting in the most relevant languages for that community;
- For each district municipality, access to all public radio BS- broadcasting in the most relevant languages for that community; and
- For each district municipalities, access to all public television BS.
- For each province, access to at least one community television BS.

Needy Persons

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".

"Person" is defined in the EC Act as "a natural or juristic person".

Section 88(4) of the EC Act provides that the Minister may, for the purposes of paying USAF subsidies for the assistance of needy persons, determine -

• Types of needy persons to whom assistance may be given;

• The persons who must apply for assistance and the manner in which such applications must be made; and

• The manner in which and persons to whom subsidies may be paid.

Thus, the Minister may, in his or her discretion, determine those matters set out in section 88(4), including the definition of needy persons. The recommendation made herein to the Minister is concerning the definition of needy persons only.

The development for procedures for needy persons applying for subsidies, criteria for awarding subsidies, and the manner of dispensing subsidies, will be the subject of further proceedings to be conducted by the Minister. USAASA will, however, continue to offer guidance and advice to the Minister as it is bound to do in terms of the EC Act in furtherance of such proceedings.

Proposed definition for Needy Persons

"'Needy persons' are persons (either collective or individual) who qualify through the application of a means test, considering a combination of factors, such as financial means, disability, age or other vulnerabilities:

• devised by the Agency; or

• Devised by one or more public service organisations or institutions, which are selected for this purpose by the Agency."

4. APPENDIX

APPENDIX 1: GLOSSARY OF TERMS

BS – broadcasting services, as defined in the EC Act

EC Act – Electronic Communications Act, 2005

ECNS – electronic communications network services, as defined in the EC Act

ECS – electronic communications services as defined in the EC Act

HDI – historically disadvantaged individual

ICASA or **the Authority –** the Independent Communications Authority of South Africa

ICT - information and communications technologies

ITU - International Telecommunication Union

LSM – Living Standards Measure, developed by the South African Advertising Research Foundation

Minister - Minister of Communications

PBS – public broadcasting service, as defined in the EC Act

USAASA or **the Agency –** the Universal Service and Access Agency of South Africa

USAF or **the Fund –** the Universal Service and Access Fund, established in terms of the EC Act

APPENDIX 2: LIST OF RESPONDENTS TO THE DISCUSSION PAPER

1.   Antelope Consulting (**Antelope**) supported by Mobile Telephone Networks (Pty)

      Ltd

2.   Blue IQ Investment Holdings (Pty) Ltd (**BIQ**)

3.   Broadband Infraco (Pty) Ltd (**Infraco**)

4.   Cell C (Pty) Ltd (**Cell C**)

5.   Department of Communications (GDYC) (**DOC**)

6.   e.tv (Pty) Ltd (**e.tv**)

7.   Independent Communications Authority of South Africa (**ICASA**)

8.   Media Development and Diversity Agency (**MDDA**)

9.   MTN

10.   MWEB Connect (Pty) Ltd (**MWeb**)

11.   Neotel (Pty) Ltd (**Neotel**)

12.   National Association of Broadcasters (**NAB**)

13.   kgsp consult and Pygma Consulting (**k and P**)

14.   South African Broadcasting Corporation Limited (**SABC**)

15.   South African Post Office **SAPO**

16.   Smile Communications (Pty) Ltd (**Smile**)

17.   Telkom SA Limited (**Telkom**)

18.   Professor PH Potgieter and Mrs. NC Lesame, University of South Africa (**UNISA**)

19.   Vodacom (Pty) Ltd (**Vodacom**)

APPENDIX 3: LIST OF ATTENDEES AT THE PUBLIC CONSULTATIVE WORKSHOP

IZIPHO GIFT PROMOTIONAL
SALGA
SABC
LTI
SAPO
MDDA
MTN
DOC
BMI – T
BLIND SA
DEPARTMENT OF EDUCATION
SENTECH
NAB
DPSA
TELKOM
ANTELOPE CONSULTING
ICASA
E-TV
SITA
FIRST NATIONAL BANK
MPHODISE LIFESTYLE
SMILE COMMS
PRIMEDIA
ON DIGITAL MEDIA
WAY 2 GO CONSULTANTS
NEOTEL
SABC
VODACOM
GAUTENG DED
MONYETLA FLIGHT ASSOCIATES
SIGN LANGAUGE INTERPRETERS
LINK CENTRE
TEL-NET COM
RWR
INDEPENDENT UNEMPLOYED WORKERS UNION
COPE UNEMPLOYED FORUM
KINGDOM COMMS

SOWETO TV
BUSH TV
CELL C PTY LTD
UNISA
SANGONET
PYGMA CONSULTING
ADVENTEC SERVICES
NAB
SENTECH
PROKRIMA
SAFIPA
LUYANDA MAGWAR