



Opening Your World

Final draft

**UNIVERSAL SERVICE FUND (USF)
PRINCIPLES AND GUIDELINES**

April 2022

TABLE OF CONTENT

1	3	
2	3	
3	4	
3.1	4	
3.2	4	
3.2.1. <i>Mobile Telephone Network Expansion</i>		4
3.2.2.	4	
3.2.3.	5	
3.2.4.	5	
3.2.5.	6	
3.2.6.	6	
3.2.7.	6	
3.3	7	
4	7	
4.1.	8	
4.2.	8	
4.3.	8	
5	10	
5.1.	10	
5.2.	10	
5.3.	10	
5.4.	10	
5.5.	11	
5.6.	11	
5.7.	11	
5.8.	12	
5.9.	12	
6	13	
6.1.	13	
6.2.	13	
6.3.	13	
6.4.	13	
6.5.	14	
6.6.	14	
6.7.	14	
6.8.	14	
6.9.	15	
6.10.	15	
6.11.	15	

1 INTRODUCTION

The Government is committed to ensuring that all the citizens of Kenya have access to modern, high-quality communication services. While the private sector has an important role in meeting universal access targets through increased investments, there is a need for Government to promote investments in unserved and underserved areas through the provision of incentives.

The Kenya Information Communications Amendment Act 2009 (KICA 2009) and the Kenya Information and Communications Regulations 2010 (KICR US&A 2010) established the Universal Service Fund (USF) to complement private sector initiatives towards meeting universal access objectives.

The Fund is primarily financed by mandatory contributions from licensed operators which provide services in the various communications market segments, with provisions for complementary financing from other sources.

The Communications Authority of Kenya (CA) is mandated to manage and administer the Universal Service Fund. In discharging this mandate, the Authority has prepared these USF principles and guidelines to inform the public and all stakeholders about the key aspects, considerations and principles that the Authority shall uphold in administering the Fund.

2 OBJECTIVES OF THE FUND

The objectives of the Universal Service Fund as provided in the Kenya Information and Communications Regulations 2010, Universal Access and Service include:

- a) **Promote communications infrastructure and services** rollout in rural, remote and under-served areas
- b) **Ensure availability of communication services** to Persons with Disabilities, women and other vulnerable groups.
- c) **Support the development of capacity building** in ICTs and technological innovation;
- d) **Support expansion of communication services** to schools, health facilities and other organizations serving public needs; and
- e) Facilitate the development of and access to a wide range of **local and relevant content.**

3 SCOPE OF THE USF

3.1 General

The USF will devote its resources toward achieving the objectives set out for the Fund, as identified above. CA will define several broad USF pillars, associated with these objectives and will implement specific USF Projects under each pillar during each fund operating year. In all cases, industry and public participation will be consulted in the development of the goals, scope, and details of program frameworks and project design.

The Fund will seek to balance its activities and financing among these different initiatives, within the limitations of available budget and capacity. For each year's operating plan, CA and the USAC will determine, based upon consultations and market assessment, the appropriate allocation of funding for each pillar. Projects will be designed to fit these budget levels, with priority locations determined according to agreed, transparent criteria.

3.2 USF Programs

The following represent the tentative USF Programs that the USF administration intends to implement. In addition, brief summary descriptions of the intended goals and outputs of each program are provided. These will be refined and expanded following stakeholder consultations.

3.2.1. Mobile Telephone Network Expansion

Projects under this program will target coverage gaps in mobile networks, where operators are unable or unwilling to extend service on their own. The Fund will work with operators and other key stakeholders to identify the boundaries of these gaps, and to determine the scope of infrastructure investment and other related costs that may require support from the USF to ensure full coverage. Priority projects will be those that reach the largest unserved populations in remote areas of the country.

3.2.2. Community Broadband Networks

The focus of this program will be to bring broadband connectivity into towns and villages where broadband is currently unavailable with priority given to underserved and unserved area. The main requirements will be to establish broadband connections at major public institutions within each designated location. These include:

- Schools

- Health facilities
- Government offices
- Post offices
- Libraries
- Other community service locations

Contracting operators that implement these projects will be responsible for constructing and operating the local broadband networks and services in the designated areas, providing end-user service to each institutional customer, according to agreed terms and conditions. The Fund will also support service subscription/usage costs for such institutions for an interim period. The operators will also be allowed and encouraged to offer commercial broadband services to other customers (homes and businesses) in each area.

Projects may also include a requirement to establish a public access ICT facility (community ICT center) in each designated location, potentially linked to a local post office or school. Management of such facilities would not be the direct responsibility of the operator, however.

3.2.3. ICT Content and Applications

Under this program, the USF will collaborate with other organizations and projects that focus on supporting development of content and applications of value to rural and underserved communities. These may include web-sites, mobile apps, educational and training materials, interactive and multimedia applications for special needs users, and other targeted ICT content. The Fund will look to co-finance development projects that serve priority needs, and also those that may become self-sustaining and commercially viable.

3.2.4. ICT Capacity Building and Awareness

The USF will support expanded capacity and awareness building, particularly in connection with other Fund projects. The Fund administration intends to establish ongoing relationships with qualified ICT training organizations, including private sector and university-based groups, to deliver customized public capacity building projects in communities where broadband networks and services are introduced for the first time. Projects may include hands-on training classes, public awareness raising events, assistance to local entrepreneurs, and both user and management training at public institutions. The goal will always be to ensure that new users in these communities have the best opportunity to benefit from the technologies as they

become available.

3.2.5. Postal & Courier Infrastructure and Services

Postal services constitute services that are essential for public use, including postage stamps, private letterboxes, acceptance, conveyance and delivery of letters, while Courier services are any specialized service for the collection, dispatch, transportation, handling and delivery of postal articles. Access to postal and courier services is crucial for socio-economic development in Kenya's urban and rural areas.

Projects under this program will target gaps in Postal & Courier services, where operators are unable or unwilling to extend service on their own. The Fund will work with operators and other key stakeholders to identify the boundaries of these gaps, and to determine the scope of infrastructure investment and other related costs that may require support from the USF to ensure full coverage. Priority projects will be those that reach the largest unserved populations in remote areas of the country.

3.2.6. Broadcasting Infrastructure & Services

Broadcasting Infrastructure constitutes hardware and software required to support the conveyance of unidirectional sounds or television for reception by the public. A broadcasting service is any service that consists of the Broadcasting of television or sound broadcasting programs to the public, sections, sections of the public or subscribers to such a service¹.

Projects under this program will target gaps in Broadcasting Infrastructure & Services, where operators are unable or unwilling to extend service on their own. The Fund will work with operators and other key stakeholders to identify the boundaries of these gaps, and to determine the scope of infrastructure investment and other related costs that may require support from the USF to ensure full coverage. Priority projects will be those that reach the largest unserved populations in remote areas of the country.

3.2.7. Special USF Projects

The Fund may also undertake certain Special Projects that merit financing through the USF and are consistent with the Fund's priority objectives. Priority will be given to Special projects in the underserved and unserved areas. For each Special Project, the Fund administration will solicit ideas, inputs, and requests from a range of stakeholders, and will prepare a tentative project plan for public comment. All details of the proposed project(s) will be open for scrutiny, including locations, services, beneficiaries, standards, and other terms and conditions.

¹ Kenya Information and Communications Act, 1998

Every effort shall be made to put special projects to competitive auction, however if such an auction is not possible because of the nature of the special project, then this decision will also be subject to public input and comment. This may be the case, for example, where the Fund agrees to cooperate strategically with a particular public agency or department, such as the Post Office or Ministry of Education.

The Fund administration may set a maximum limit on the amount of Fund resources that can be assigned to Special Projects during any given year.

3.3 Services and Facilities to be supplied

Each USF Program and USF Project will consist of clearly defined requirements for contractors to supply under the terms of the funding agreement. Contracting service providers shall be obligated to deliver the mandatory infrastructure, facilities, and/or services according to specific terms and conditions, including a clear timetable. Among the types of outputs that USF contractors may be required to provide are:

- Supply, installation, and operation of fiber optic cable, or equivalent transmission infrastructure, for backhaul network and last-mile connections.
- Construction and maintenance of wireless transmission masts and antennae, along with related support structures and equipment.
- Installation and operation of switching and routing equipment, software, and supporting facilities, typically expanding existing core equipment.
- Provision of end-user customer services and support, equivalent to that provided to all commercial customers.
- Establishment of public access facilities, including computer equipment, software platforms, servers, ancillary devices, and related structures and furnishings.
- Relevant end-user applications, information content, programming and development support, web hosting, etc.
- Provision of appropriate Postal and Courier services
- Construction of broadcasting towers for both radio and TV services

Contractors will be expected to deliver these and other outputs either via their own networks and systems, and/or through subcontracts and relationships with other appropriate suppliers, to the full satisfaction of all USF contract requirements.

4 FUND GOVERNANCE AND MANAGEMENT

4.1. **Governance**

The Fund shall be governed by the Communications Authority of Kenya (CA) with oversight of the Universal Service Advisory Council, appointed by the Government.

As per Section 84J (3) of KICR 2010, a Universal Service Levy (not exceeding one per cent of gross revenue) shall be charged on all Licensees offering communications systems and services on a commercial basis, including Telecommunication Network and Service Provider Licensees, Postal & Courier Licensees and Broadcasting Licensees.

Other sources of funding may include:

- Government appropriations
- Income from investments by CA
- Gifts, Donations, Grants and Endowments

The specific functions of the Authority, as relate to the USF, include collection of the funds as provided by the KICA 2009, and disbursement of these funds within the USF principles and guidelines, through the Universal Service Obligations and Funding (USO&F) Division.

4.2. **Fund Disbursement**

CA shall ensure that utilization of the Fund is transparent to the public, and subject to independent audit. The award of disbursements shall be conducted through a transparent, non-discriminatory, and competitive process. It is the Authority's intention to disburse funds in the form of **non-reimbursable grants**, for purposes of underwriting the capital and operating costs of projects to be implemented by Fund recipients, according to the framework described herein.

4.3. **Management of the Fund**

The Kenya Information and Communications (Universal Access and Service) Regulations, 2010, lay down the guidelines according to which the USF Accounts shall be prepared and maintained. The Authority shall have custody of the account books, cheque books, securities, investment instruments and other documents and papers pertaining to the Fund and the Fund Account. The books of accounts of the Fund shall be always open for inspection by the members of the Universal Service Advisory Council and the Licensees. The USF accounts shall be audited once

a year by accredited professional auditors appointed by CA, through an open and transparent process. In addition, consistent with the statutory audit requirements, a Government audit shall also be undertaken. In the course of managing the Fund, CA may make and liquidate investments of surplus sums. The amounts from the Fund shall be invested only in **Government risk-free financial securities or schemes**. Any interest/profits shall be credited to the USF account.

5 GUIDING PRINCIPLES OF USF OPERATIONS

5.1. General

CA under the advisory role from the USAC shall operate the USF under clear and public rules of procedure, and according to a set of firm principles. The following items describe some of these core principles that will guide implementation of the USF.

5.2. Alignment of USF procurement with Public Procurement and Asset Disposal Act

The procurement of USF project will embrace effectiveness and public participation. The process will continually seek to work within the existing Government of Kenya Public Procurement and Asset Disposal Act, and other related Acts on Public Financial Management, public investments and handling assets transfer or Public-private partnership (PPP). In the event of limited clarity CA should seek clarification and clearance from the Public Procurement Oversight Authority (PPOA).

All eligible providers will be allowed to bid for these contracts, following standard procurement methods allowed by the public procurement, finance and Investments rules. To ensure transparency, all bidding documents will be made publicly available, along with other key information about the bidding processes and the projects to be awarded. At the conclusion of every bidding, a summary of the bid evaluation, containing the entire bidding process, its history, bid prices and the bidding result shall be publicized, including by being posted on the USF website. As projects are implemented, progress and monitoring reports will also be regularly updated on the Fund website.

5.3. Transparent Processes

All activities of the USF shall be conducted in an open, transparent manner, in close consultation with private and public sector stakeholders. In developing program goals and project design, CA shall consult directly with affected parties, including potential service providers, end user communities, and other organizations that may participate in the projects. The Fund's accounts, including collections and spending, shall be publicly available on the CA website, along with the results of all procurements, and criteria for all decisions. All USF rules and procedures shall also be open for public inspection and input.

5.4. No Distortion of the Market

CA will always seek to ensure that the activities of the Fund do not distort or interfere

with private sector market competition. The Fund will not be used to subsidize markets or services that can be served commercially without USF support. All market players will have fair and equal opportunities to compete for Fund resources, subject to consideration of the demand side of the market (users of ICT services and products) and not just the supply side as a guide.

5.5. Infrastructure Sharing

All service providers that receive USF funds either individually or in joint venture based on their respective licensing framework and guidelines, shall be required to allow open, cost-based sharing of infrastructure on facilities built under USF contracts to other licensed operators. Such sharing may include access to masts, cables, dark fiber, physical structures, ducts, equipment enclosures, and similar facilities. Terms, conditions, and restrictions on such shared access will be developed by CA as part of the USF project implementation rules, to be developed in consultation with industry providers to ensure fairness and technically reasonable requirements. **The infrastructure should allow government institutions with critical services to utilize free of charge.**

5.6. Uniform Criteria for Selection of Areas

CA shall develop clear and objective methods and criteria for prioritizing geographic zones where USF projects will be implemented. In general, priority will be given to rural, remote, and small towns and villages which are un-served or under-served by telecommunications networks and ICT services, and where commercial operators do not intend to provide service on their own. The factors that will determine which specific areas will be chosen for any given projects will be determined on a transparent and fair basis, including consultations with local stakeholders, taking account of such criteria as access and proximity to existing network infrastructure, size of population and density, status of supporting infrastructure (energy, roads, etc.), socio-economic conditions, and geographic and demographic diversity.

5.7. Technology Neutrality

In awarding USF projects, the CA shall not expressly promote or disallow any particular technology platform, system, or architecture that can be demonstrated to achieve the required results. Bidders for USF contracts shall be allowed to propose any suitable current or new technology or design to fulfill project requirements,

without penalty, as long as the chosen solution has a proven record of service in the field, anywhere in the world. Bidders will be encouraged to propose the most cost effective mix of technologies using any innovative and forward-looking solutions.

5.8. Limitation on Funding to Licensee

The Authority shall endeavor to ensure that all Licensees contributing to the Fund have a fair and equal opportunity. In particular, the Authority will consider establishing maximum limits on the total number of projects or amount of payments from the Fund that any one licensee can receive during a given time period. The precise terms of such limits will be determined through a consultative rulemaking process.

5.9. Public Consultation and Awareness

The Authority shall widely disseminate the purpose and objectives of the Fund through the media as well as by arranging public events, especially at places where USF Projects are being planned or implemented. It should embrace public participation as required by Constitution 2010 in all its projects.

6 PROJECT PLANNING AND IMPLEMENTATION

6.1. Project Development Criteria

The Authority will develop the scope, location, and details of specific projects to be implemented under the various Fund pillars, in consultation with industry and local stakeholders. The Fund will not finance projects in locations that can be commercially served by competitive market players on their own. CA will regularly review the status of market development and plans, and the scope and nature of gaps in network and service access, as an input to the project planning process. CA shall also develop neutral and transparent criteria for selecting which eligible locations may receive priority attention for USF supported projects.

6.2. Project Planning

CA shall prepare a project plan for each project, in consultation with potential beneficiaries and industry. Each plan shall include a clear description, applicable service requirements, specifications and standards, service implementation timetable and any special commercial terms that would have an impact on the feasibility or business planning for the implementing contractor. Where the project is to be auctioned with a reserve price, the project plan shall also identify the maximum subsidy amount.

6.3. Project design and Management of USF projects

The projects designs will require pre-feasibility studies, tendering, award, and supervision during implementation. The review should aim to reduce bottlenecks in procurement, increase efficiency in implementation, and increase impact.

6.4. Eligibility Criteria for Fund Applicants

In the competitive bidding for projects requiring the provision of infrastructure, connectivity and service, either duly licensed operators, or joint venture where the duly licensee is the lead agency shall be eligible to participate.

A Licensee shall be disqualified from taking part in a tender if it:

- a) defaults in payment of its USF contribution;
- b) has failed to complete previously granted contracts

In consultation with the industry players, other specific eligibility and qualification criteria will apply to each project, to ensure that only well qualified participants may

compete for USF financed projects. Public sector entities and other non-licensees shall be eligible to bid for special projects relating to ICT services and applications, if such systems or services do not require a license from CA or the demand for the service overrides the requirement for the provider to be a licensed by CA.

6.5. Monitoring and Evaluation

CA shall implement a robust Monitoring and Evaluation framework to oversee all USF financed projects. This shall include but not limited to regular onsite and offsite monitoring of all projects to make sure that the funding is being utilized in accordance with the contracts.

In addition, the Authority will undertake impact evaluation studies to assess the performance of USF projects, and whether the USF pillars in general are meeting their objectives. Further, the evaluations will be used to assess the effectiveness and impact of USF pillars towards the achievement of the universal access goals in Kenya.

6.6. Ownership and disposal of USF Funded assets

The projects ownership will be detained based on the Public Acts during the procurement and tendering phase. This will ensure, the management of the project post implementation is well handled. In some extreme cases, legal provision should be secured to provide allowance for CA to own sites that fall under security threat and extreme gap areas.

6.7. Partnership and Collaboration

There are various stakeholders who play important roles in the implementation of the USF pillars. Therefore, there is need for greater collaboration and fostering partnership with agencies or organization that can build synergy with the project to be implemented. All USF projects will consider at the design level organizations they could partner with for effective, efficient and optimum delivery for the community or users of the service or technology.

6.8. Complementary infrastructure

To ensure increased impact and sustainability, in the unserved and underserved areas, USF will seek to partner with other infrastructure providers like roads, water, energy. On a need by need basis USF may consider supplementing the cost of provision of such services to increase community ownership and acceptance.

6.9. **e-Inclusivity**

E-inclusivity means that all members of a community will be able to participate in the benefits of the projects undertaken under the USF despite their handicap. The projects will address e-Inclusivity to include everyone without exception benefits from ICT services and products. These will include but not limited to Persons Living with Disabilities, Women, the Youth, Children, the elderly and any other special groups. The goal is to bridge the digital divide for an inclusive information society and enable the provision of broadband access for all, leaving no one offline.

6.10. **Stakeholder Management and Public participation**

To enhance stakeholder management and public participation, project design, choice of sites, and management of sites including provision of security will be done with the involvement of the local community in order to increase ownership.

6.11. **Sustainability**

To ensure sustainability of USF projects, the project design will include sustainability of the services and projects in the entire value chain. Strategies to ensure sustainability will be included in the projects funded by USF