

GOVERNMENT NOTICE NO. 72

COMMUNICATIONS ACT

(CAP. 68:01)

COMMUNICATIONS (UNIVERSAL SERVICE FUND) RULES, 2019

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IN EXERCISE of the powers conferred by section 162 of the Communications Act, the Malawi Communications Regulatory Authority makes the following Rules—

## PART I—PRELIMINARY PROVISIONS

- Citation 1. These Rules may be cited as the Communications (Universal Service Fund) Rules, 2019.
- Interpretation 2. In these Rules, unless the context otherwise requires—
- “Committee” means the Universal Service Fund Committee established under section 159 of the Act;
- “designated population” means individuals, households, groups, communities or institutions determined by the Authority, from time to time, to be the target beneficiaries of the Universal Service Fund;
- “licensee” means a provider of communication services duly licensed to provide such services by the Authority under the Act;
- “operating plan” means a plan prescribed by the Authority for the implementation of specific universal service programs and projects;
- “prequalified communication service provider” means a provider of services which are not licensed by the Authority but have been identified to provide services which are part of the components of the universal service;
- “subsidy” means assistance granted by the Fund to support universal service programs and projects;
- “underserved area” means any geographical area that, in the assessment of the Authority, has no or inadequate communication infrastructure or access to communication services;
- “universal service area” means an area identified by the Authority as an area which needs regulatory intervention and provision from the Universal Service Fund in order to promote universal service;
- “universal service beneficiary” means a person or an area benefitting from the Universal Services Fund;
- “universal service levy” means the levy to be used for universal service programs that the Authority shall apportion from a licensee’s annual levy;
- “universal service provider” means a licensee or any other person designated by the Authority to provide universal services or part thereof within Malawi in accordance with the Act or contract;
- “universal service project” means a specific micro-level implementation activity related to the universal service program; and
- “universal service program” means the general macro-level universal service initiatives aimed at achieving one or more objectives of the Universal Service Fund.
- Scope of Rules 3. These Rules shall provide a regulatory framework for—
- (a) the design and implementation of universal access and service provision; and

(b) the administration of the Universal Service Fund in Malawi.

4. For the purpose of achieving the universal access and universal service under Part XVIII of the Act, the Fund shall be used to— Use of the Fund

(a) encourage efficient access to, and use of, communications systems and services throughout the Republic of Malawi focusing on rural, remote and under-served areas in order to promote social and economic development;

(b) ensure reasonable availability and affordability of basic and advanced communications services to persons with disabilities at household and individual levels, particularly where the market is unable to deliver such services in a financially viable manner;

(c) support the development of information and communication technologies, including related human capacity and technological innovation;

(d) provide support for the introduction and expansion of communication services to public or private institutions providing social services;

(e) facilitate the uptake of, access to, and use of, relevant local content; and

(f) implement any other programs and projects related to the achievement of the Fund considered necessary by the Authority.

#### PART II—ADMINISTRATION OF THE FUND

5.—(1) The Authority shall, from time to time, determine the proportion of universal service levy from a licensee's annual levy. Administration of the Fund

(2) The Authority shall open and maintain a bank account for the Fund, which shall be separate from its general account, and shall keep proper books of accounts and records of the operations of the Fund.

(3) The Authority shall cause the Fund to be audited in accordance with section 29 of the Act.

6.—(1) The members of the Committee shall elect one of the members as chairperson of the Committee at its first meeting to be convened and presided over by the Director General of the Authority. Governance of the Committee

(2) The quorum at any meeting of the Committee shall be four members of the Committee.

(3) The Committee shall meet to conduct its business at least quarterly.

(4) The chairperson may convene a meeting to transact the business of the Committee by giving its members at least fourteen days' written notice:

Provided that where an urgency of the matter requires a shorter period the Chairperson may convene a meeting by giving a shorter period of notice.

(5) In the absence of the chairperson, the members present and

constituting a quorum shall elect one of their members to preside over a meeting.

(6) Section 23 of the Act on disclosure of interest in relation to member of the Authority shall apply to the Committee with necessary modifications.

(7) The chairperson shall circulate a copy of the agenda for each ordinary meeting with the notice of the meeting.

(8) A member of the Committee shall attend meetings of the Committee in person.

(9) A member of the Committee shall not miss not more than two meetings in any one year unless the situation demands and in such event the member shall notify the chairperson in writing.

(10) Decisions of the Committee shall be made by a simple majority of votes of those members present and entitled to vote at the meeting.

(11) Every member of the Committee shall have one vote and in the event of an equality of votes, the chairperson shall have a casting vote.

(12) The Committee shall report its decisions and resolutions to the Authority as a feedback to the proposals made by the Authority through the Department of the Universal Service.

(14) The Committee may, at its discretion and where it is determined relevant to have an expert present, invite persons with specific knowledge, skills and experience to attend any of its meetings, but such persons shall not be eligible to vote at the meeting.

(15) The person heading the Universal Service Department or his designated representative shall act as the Secretary to the Committee.

(16) The person heading the Universal Service Department shall circulate the minutes of a meeting of the Committee to each member of the Committee within fourteen days from the date of the meeting.

(17) The circulated minutes shall be ratified at the following ordinary meeting of the Committee.

Vacancy in the  
Committee

7.—(i) The office of a member of the Committee shall become vacant—

- (a) upon the expiry of the period of his appointment;
- (b) if he resigns from the Committee;
- (c) if he ceases to be a member of the sector from which he was nominated from;
- (d) upon his death;
- (e) if he is absent, without valid excuse and consent of the chairperson from three consecutive meetings of which he has had notice;
- (f) upon being adjudged bankrupt by a competent court of law;
- (g) if he knowingly fails to declare a conflict of interest relating to any matter under consideration by the Committee;

(h) if he, by reason of mental or physical infirmity as certified by a medical practitioner, becomes incapable of performing his duties as a member;

(i) if he has, within the last three years, been convicted of a crime by a competent court of law which is punishable with imprisonment without option of a fine;

(j) if he breaches oath of secrecy; or

(k) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as a member.

(2) A member of the Committee shall not be removed from office, except after due inquiry, and only upon a decision made by the Authority in consultation with the sector which nominated him or organization which he is representing.

(3) A vacancy in the Committee shall be filled through the appointment of another member in accordance with the Act and the member so appointed shall hold office for the remainder of the term of his predecessor's.

8.—(1) A member of the Committee shall be paid such allowances or other benefits as prescribed in the Schedule hereto.

Honoraria  
of members  
of the  
Committee

(2) The allowances and other benefits referred to in subrule (1) shall be paid from the Fund.

9. For the purpose of discharging its duties and functions under section 156 of the Act, the Authority shall—

Duties and  
functions of  
the Authority  
related to the  
Fund

(a) supervise and provide broad policy guidance for the management of the Fund

(b) establish a Universal Service Department to be charged with operational matters of the universal service programs;

(c) through the Universal Service Department, propose annual and multi-annual universal access and universal service programs and budgets, as well as activity plans to be submitted to the Committee; and

(d) publish annual reports of the operations of the Fund.

10.—(1) The Authority shall, within six months after the end of the financial year, prepare and submit to the Committee, an annual report containing—

Annual report  
of the Fund

(a) the audited financial statements of the Fund; and

(b) details of activities financed by the Fund.

(2) The Authority shall ensure that annual reports are made public and published on the website of the Authority.

11. The Authority may invest or apply the proceeds of the Fund towards—

Investment  
of proceeds  
of the Fund

(a) fixed bank deposits;

(b) Government securities; or

(c) any other investments approved by the Authority.

The universal  
service  
department

12.—(1) There is hereby established a department to be known as the Universal Service Department (herein referred to as the “Department”) which shall be—

- (a) a semi -autonomous unit within the Authority; and
- (b) in charge of the day to day operations of universal service programs and projects.

(2) The functions of the Department shall include—

(a) development of universal services programs for underserved areas which shall be submitted for review, recommendation or approval of the Committee;

(b) determination of universal service areas;

(c) setting out of operations to be undertaken to ensure universal service;

(d) proposal of annual and multi-annual universal access and universal service programs and budgets, as well as activity plans and projects to be submitted to the Committee;

(e) defining, planning and coordinating the implementation and monitoring of the universal access and universal service;

(f) developing a plan for each project;

(g) proposing to the Committee, designation of universal service providers to be in charge of the universal service or components of the universal service;

(h) establishing administrative mechanisms, systems and structures for proper management of the Fund;

(i) developing clear and objective methods and criteria for prioritizing geographic zones where Fund projects shall be implemented;

(j) formulating annual operating plans of the Fund;

(k) developing operating guidelines to be submitted to the Committee relating to the management of the Fund; and

(l) discharging any other functions related to operational functions of the Fund.

### PART III—GENERAL PRINCIPLES FOR UNIVERSAL SERVICE FUND

Identification  
of universal  
service projects

13.—(1) The Authority shall, from time to time, determine components of universal service projects to be financed by the Fund.

(2) In determining the universal service components pursuant to subrule (1), the Authority shall conduct studies to identify universal service areas and services.

(3) The Authority shall ensure that adequate consultation takes place with both private and public sector stakeholders and communities likely to be impacted in the development of universal service programs, projects, and activity plans.

(4) The Authority shall publish a notice designating universal service areas and services on its website and in at least two newspapers of nationwide circulation.

(5) When identifying the projects to be supported by the Fund, the Authority shall—

(a) promote the establishment of efficient, self-sustaining universal service programs, that expand access to communications services on their own initiative and with minimal funding;

(b) support projects that are not economically feasible in order to make them viable;

(c) support projects to the extent necessary to create adequate economic incentives for investors;

(d) ensure that the provision of universal service is made on affordable tariffs that are accessible to all; and

(e) support any project that promotes the objectives of the Fund.

14.—(1) The Authority shall, from time to time, call for bids for universal service projects or initiatives.

Identification  
of universal  
service  
providers

(2) Any person who wishes to make an application pursuant to this rule shall submit to the Authority its application in a predetermined format as specified by the Authority.

(3) A person shall not be eligible to submit bids, unless he is a licensee or a prequalified communication service provider.

(4) The Authority shall accord licensees equal opportunity to submit bids and applications under subrule (1).

(5) The Authority shall ensure that the award of contracts for Fund projects shall be subject to an open and competitive bidding process and procedure.

(6) Any application made pursuant to this rule shall include the following—

(a) a development proposal which shall including its implementation plan;

(b) the name of the unserved or underserved area for which the development proposal is to be implemented;

(c) the estimated cost of the development that the universal access provider wishes to undertake;

(d) a sustainability plan for the future operation and maintenance of the development; and

(e) any other condition as specified by the Authority.

15.—(1) The Universal Service Department shall evaluate all the bids and make a decision within the period as specified in the bid document.

Evaluation  
of bids

(2) The Universal Service Department shall, when evaluating the bids, take into account the following—

- (a) whether a proposal is acceptable and feasible;
- (b) whether the proposal justifies funds being requested;
- (c) whether the applicant has complied with bid conditions;
- (d) the possible time within which the proposal will be implemented; and
- (e) any other matter necessary for giving effect to the provisions of these Rules.

(3) The Authority shall enter into a universal service contract with a successful bidder.

(4) The universal service contract shall include the following—

- (a) the name and details of the successful bidder or applicant;
- (b) contract reference number;
- (c) the development proposal;
- (d) the amount of money required;
- (e) universal service obligations;
- (f) performance bond; and
- (g) any other condition as specified by the Authority.

Mechanisms  
for funding

16.—(1) The Authority shall use any of the following mechanism for funding universal service programs and projects—

- (a) grants;
- (b) subsidy;
- (c) cost share; and
- (d) loans.

(2) The competitive selection processes used by the Authority may include minimum subsidy auctions or such other processes designed by the Authority that are in accordance with these Rules.

Disbursement  
from the fund

17.—(1) The Authority shall disburse resources from the Fund, subject to the award of universal service contracts.

(2) The Authority shall ensure that there is transparency in the implementation and utilization of the proceeds of the Fund.

(3) The contract specified under subrule (1) shall set out—

- (a) the targets to be achieved in respect to the universal service projects;
- (b) a schedule of specific tasks and milestones to be completed under the contract;
- (c) a schedule of payments consistent with the provisions under subrule (3)(b); and
- (d) any other terms and conditions deemed necessary by the Authority.

(2) The Authority shall ensure that in any financial year expenditures from the Fund shall not exceed the annual income of the Fund.

(3) The financial year of the Fund shall be in accordance with the financial year of the Authority.

18.—(1) A universal service provider shall meet all roll out targets specified by the Authority in a universal service contract.

Service  
obligation in  
respect of  
universal  
service area

(2) A universal service provider shall submit a quarterly report to the Authority of its performance with respect to the universal service obligations stated in the universal service contract.

(3) The Authority shall carry out quarterly performance monitoring of a universal service provider in order to ensure that the performance of the provider satisfies the standards described under the contract.

(4) The Authority shall, every six months, publish the performance of the universal service provider in meeting their service obligations.

(5) A universal service provider shall—

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

(b) ensure that—

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

(ii) its services are reasonably accessible to all persons on an equitable basis, irrespective of location under its specific universal service area.

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

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

(8) A contract concluded pursuant to these Rules shall not, without the prior approval of the Authority, be sold, assigned, leased, mortgaged or otherwise transferred to a third party.

(9) Subject to the other provisions of these Rules, the Authority may revoke a contract where—

(a) the universal service provider has not, within the period stipulated in the contract, commenced the service for which the contract was made; or

(b) the universal service provider provides a communications service that the universal service provider is not contracted or licensed to provide.

(10) Where a universal service provider has not complied with the Act or

with the conditions of the universal service contract, the Authority shall notify the universal service provider of the measures that the provider shall undertake, within a specified period, to comply with the conditions of the Act or the contract.

(11) The Authority shall, where a universal service provider fails to comply with a notice issued pursuant to subrule (10), within a specified period of time, revoke the contract.

(12) The Authority shall not be liable to refund a universal service provider whose contract is revoked in terms of this rule, the contribution made by the universal service provider to the Fund and to the provision of the universal service in the project areas.

(13) Where a contract is revoked pursuant to this rule, the rights and obligations under the contract shall cease to exist and the universal service provider shall surrender the original copy of the contract to the Authority.

(14) The Authority shall, before revoking a contract pursuant to this rule, give the universal service provider an opportunity to be heard.

(15) The Authority shall, in promoting the provision of universal service—

(a) ensure that the provision of universal services meets the requirements of affordability, accessibility, availability, sustainability and quality of service;

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

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

(d) establish and determine, for sharing, the net cost of universal service obligations between contracted providers.

(16) The Authority shall take all reasonable steps to promote universal service in its totality in an area designated as a universal service area.

Monitoring  
and evaluation

19.—(1) The Authority shall—

(a) develop the monitoring and evaluation framework for all universal service programs and projects;

(b) periodically monitor and evaluate the universal service programs and projects; and

(c) conduct an impact assessment that evaluates the success of each program of the Fund in meeting set objectives and to measure the effectiveness of the Fund.

(2) The Authority shall publish on its website, an impact assessment report of the Fund, every three years.

## PART IV—OFFENCES AND ENFORCEMENT

20.—(1) A universal service provider who—

Offences

- (a) fails to meet targets set out in a universal service contract;
- (b) fails to comply with an order made by the Authority pursuant to these Rules;
- (c) obstructs or prevents a monitoring exercise by the Authority in respect of its performance and targets specified in the universal service contract; or
- (d) fails to comply with any provision of these Rules, commits an offence.

21.—(1) The Authority may, for contravention of any provision of these Rules, impose any enforcement order or sanction as provided for under section 195 of the Act.

Enforcement

(2) In imposing an enforcement order or sanction under subrule (1), the Authority shall consider any aggravating factors, including—

- (a) the gravity of the contravention;
- (b) the duration of the contravention;
- (c) whether the contravention resulted in injury to a person or property;
- (d) whether the provider acted knowingly, recklessly, or in a negligent manner; or
- (e) whether the service provider has a previous history of contraventions.

## PART V—MISCELLANEOUS

22.—(1) The Authority may issue directions on any aspect of these Rules.

Directions

(2) The directions issued under subrule (1) may either be of general or specific application to the promotion of universal service.

## SCHEDULE

## REMUNERATION OF THE UNIVERSAL SERVICE FUND COMMITTEE

(1) HONORARIA (PER ANNUM), PAID QUARTERLY					
Chairperson	..	..	..	..	K350,000.00
Committee member	..	..	..	..	K300,000.00
(2) SITTING ALLOWANCE (PER SITTING)					
Chairperson	..	..	..	..	K40,000.00
Committee member	..	..	..	..	K35,000.00
(3) AIRTIME ALLOWANCE (PER MONTH)					
Chairperson	..	..	..	..	K35,000.00

## (4) ACCOMODATION (PER NIGHT)

	Full Board (MWK)	DSA (MWK)
Chairperson,	—	45,000
Committee member		

## (5) TRANSPORT

The US Fund shall reimburse transport costs incurred by the Universal Service Fund Committee based on Government policy on T&T.

Made this 2nd day of September, 2019

GODFREY ITAYE  
*Director General*

REV. ALEX MAULANA  
*Chairperson*

(FILE NO. MACRA/DG/124/DC)