
GENERAL NOTICE

NOTICE 319 OF 2009



UNIVERSAL SERVICE AND ACCESS AGENCY OF SOUTH AFRICA

NOTICE OF PUBLIC CONSULTATIVE WORKSHOP: DRAFT POSITION PAPER IN RESPECT OF CONSULTATIVE FRAMEWORK ON DEFINITIONS OF UNIVERSAL ACCESS AND UNIVERSAL SERVICE (GOVERNMENT GAZETTE NO. 31333, NOTICE 987 OF 2008 DATED 15 AUGUST 2008).

The Universal Service and Access Agency of South Africa herein after referred to as ("Agency") or USAASA, hereby, in accordance with section 82(3) read with sections 88(2), (3) and (4) of the Electronic Communications Act No. 36 of 2005, as amended ("the Act"), gives notice of the intention to convene a public consultative workshop on the Draft Position Paper in respect of proposed definitions on universal service and access, the proposed determination of under-serviced areas and the proposed determination for needy persons.

The Agency published a consultative document (Discussion Paper) in **General Notice 987** published in **Government Gazette No. 31333 15 August 2008**. Accordingly, the Agency invited interested parties, stakeholders and the public to make written representations in respect of the issues raised in the Discussion Paper, by **12 September 2008**. The Discussion Paper was also made available on the Agency's website (www.usaasa.org.za).

USAASA received numerous requests for extension of the initial period stipulated in the Government Gazette and after careful consideration, extended the closing date to **7 November 2008** as contained in **Notice 1208** published in **Government Gazette No. 31456** of 26 September 2008.

16 (sixteen) submissions were received with 8 (eight) of the respondents having expressed their willingness to make oral representations. A Draft Position Paper which is a culmination of responses received by the Agency has been formulated for further comment. **The interested parties, affected organisations and stakeholders are hereby invited to make comments on the draft position paper, at a public consultative workshop.**

The Agency has taken the opportunity presented by provisions of Chapter 14 of the Act, requiring a collaborative approach in implementing the said Chapter and consequently a Steering Committee constituting representation from the Department of Communications, the Independent Communications Authority of South Africa ("ICASA"), the Media Development and Diversity Agency

("MDDA") and the Agency has been formally established. The principal objective of the steering committee is to facilitate the deliberations of the consultative public workshop in promoting national consensus on the proposed definitions of universal access and universal service as required by the Act.

THE PROCESS OF THE PROCEEDINGS IN THE PUBLIC CONSULTATIVE WORKSHOP

The workshop will be informal, encouraging those present to contribute freely. It will be held over 2 days.

The first day will consist of a presentation by the Agency of its findings resulting from the 16 written responses to the Discussion Paper. This comprises, inter-alia, a summary of the proceedings; explanatory and introductory comments to the approach taken and conclusions reached; the proposed definitions to be recommended to the Minister in relation to universal access, universal service, and needy persons; and recommendations to ICASA in relation to under-served areas. Each definition will be accompanied by targets where applicable, and guidelines. As each definition or recommendation is presented, questions will be invited and discussion encouraged. We anticipate that this will take the whole of the first day.

USAASA wishes to emphasise that the process has taken almost a year, and has been debated widely. Due regard has been given to international best practice and experience in other similarly situated countries. The Agency therefore, presents the proposed definitions and their context to ensure that there is a full understanding of the rationale behind their adoption. Attendees are also reminded that the definitions are recommended with targets for a period of 2 years after which they will be reviewed. Please note that targets are not obligations.

If, after the presentation by the Agency, any of those who responded in writing wish to make further presentation on the definitions, they may do so. Presentations will be limited to 20 minutes each and participants are urged not to merely repeat their original written submissions. At the end of the first day those who still wish to make their presentations as indicated in their written submissions, are requested to confirm the same to the Agency to enable it to update the agenda for the second day.

Following the conclusion of the workshop, the Agency will consider all the input, and deliberations over the two days and effect, where relevant, changes to the definitions. It is anticipated that the final version will be submitted to the Minister or ICASA, as the case may be, at the end of April 2009.

Public consultative workshop will be held on 2 and 3 April 2008.

Venue: Cedar Park, 120 Western Service Road, Woodmead

DAY 1, 2 APRIL 2009

9h00:	Welcome outlining USAASA's mandate	
9h15:	Introduction by USAASA explaining the goals of Chapter 14 and the process followed to date	
09h30 – 11h00:	Presentation (universal access)	Question & Answer Session
11h00 – 11h20:	Tea	
11h20 – 13h00:	Presentation (universal service)	Question & Answer Session
13h00 – 14h00:	Lunch	
14h00 – 15h30:	Presentation (under-serviced area)	Question & Answer Session
15h30 – 15h50:	Tea	
15h50 – 16h30:	Presentation (needy persons)	Question & Answer Session
16h30:	Summary of Proceedings and Announcements for next Day	
17h00:	Closure and Cocktail Party.	

DAY 2, 3 APRIL 2009

Organisation	Time
1. Cell C	09h00 – 09h20
2. Vodacom	09h30 – 09h50
TEA BREAK	
3. MWEB CONNECT	10h00 – 10h20
4. Smile Communications	10h30 – 10h50
5. Pygma Consulting and KGSP Consulting	11h00 – 11h20
BREAK	
6. National Association of Broadcasters	11h30 – 11h50
7. E-tv	12h00 – 12h20
8. SABC	12h30 – 12h50
OPEN DISCUSSIONS AND WAY FORWARD	
CLOSING REMARKS	
LUNCH	

Any enquiries in relation to this notice must be submitted in writing (via email or fax) to:

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Phineas Moleele
Acting Chief Executive Officer
USAASA
Date: 30 March 2009

USAASA

DRAFT POSITION PAPER

SUMMARY OF RESPONSES TO DISCUSSION PAPER AND PROPOSED RECOMMENDATIONS TO THE MINISTER AND ICASA

20 March 2009

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1. INTRODUCTION AND APPROACH

1.1 Background

- 1.1.1 A glossary of the abbreviations used in this Paper is set out in *Appendix 1*.
- 1.1.2 In accordance with sections 82(3) of the ECA, the Agency invited written representations to proposed definitions of “universal service” and “universal access”. The Agency also invited written representations on the proposed definition of “under-served areas”, which the Authority is bound to provide in terms of section 88(2) and (3) of the ECA and proposed recommendations to the Minister in respect of “needy persons” to be determined in terms of section 88(4) of the ECA.
- 1.1.3 In terms of sections 82(4)(e) and (f) the Agency is obliged in certain circumstances to make recommendation to the Minister and the Authority in relation to universal access and universal service, and therefore intends to make recommendations in respect not only of the definitions of universal access and universal services, but also under-served areas and needy persons.
- 1.1.4 The invitation appeared in Notice 987 of 2008 of *Gazette 31333* of the 15th of August, 2008 (“Discussion Paper”). The Agency received sixteen written responses which are available at www.usaasa.org.za. A list of the persons who responded is provided in *Appendix 2*.
- 1.1.5 The Discussion Paper considered in great detail the history of universal service and universal access within the South African policy and legislative context, internationally applied principles and different approaches, and specifically, the current regulatory environment in formulating proposed definitions and other recommendations.
- 1.1.6 The next step in this process is the publication of this draft Position Paper and the holding of a public workshop, which will enable interested parties to consider and discuss with the USAASA the revised recommendations or provide further comment. The outcome of that workshop will inform further and final changes to the Position Paper, which will then be submitted to and discussed with ICASA and the Minister.

1.2 Key points to note

1.2.1 There are some key points to note when reading this Position Paper. They have informed USAASA's review of responses to the Discussion Paper and revision to proposed definitions and recommendations.

1.2.1.1 The purpose of defining universal access and universal service is to inform policies, regulations and programmes developed by the Minister, ICASA and USAASA to help achieve universal access and universal service. It is not an end itself, only a first step. Universal access and universal service are defined in the ECA in Chapter 14 which requires the Minister to define the terms from time to time on the recommendation of USAASA. The purpose of defining "under-serviced areas" and "needy person/s" is more specific than the purpose of defining universal access and universal service. These definitions will lead to a list of under-serviced areas eligible for payments from the USAF, and a determination of the types of needy persons to whom USAF assistance may be provided to enable those persons to access ECS and BS.

1.2.1.2 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 ECA. Targets are applicable for a certain period. At this point, the Agency proposes to apply targets for 2 years. Targets therefore establish goals and priorities for the industry with no specific consequence for licensees if they are not met in this form. The imposition of licensee obligations is not the subject of this proceeding.

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

1.2.1.4 the provision of subsidies to certain schools and further education and training institutions for the procurement of BS, ECS and access to ECNS, or for the

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

1.2.1.5 competitive tenders for universal service and access projects provided for in section 90 of the ECA;

1.2.1.6 the process of awarding subsidies out of the USAF;

1.2.1.7 the e-rate provided for in section 73 of the ECA;

1.2.1.8 regulations relating to contributions to the USAF in terms of section 89 of the ECA; and

1.2.1.9 postal services, since these are not within the scope of the ECA.

1.2.2 Also not included in this proceeding, although USAASA understands the importance of these issues to the achievement of universal service and universal access, 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 critical for universal service and access.

1.2.3 The ECA is not as clear in certain provisions, hence many of the questions set out in the Discussion Paper. Many respondents held a similar view, that the ECA is not altogether clear in certain respects. Therefore, it is likely that recommendations will be proposed for amendments to the ECA in due course. In terms of section 82(4)(g) of the ECA, the Agency is obliged to continually evaluate the effectiveness of the ECA and things done in terms thereof in order to achieve the goal of universal access and universal service.

1.2.4 The Agency is not bound by any rules in relation to the format of a Position Paper or in relation to recording all of the responses to a Discussion Paper. USAASA has however, decided to summarise some of the helpful comments made by those who responded to the Discussion Paper. The absence of any one or more points made in this summary does not mean that all of the comments have not been carefully considered by USAASA.

Indeed, USAASA has scrupulously considered all comments and documents provided to it in response to the Discussion Document. Please bear in mind that defining these concepts is an iterative process, and that further discussion with interested parties will take place now and in any future reviews that take place as the industry develops and the full force of the ECA is felt on licensees and consumers and potential consumers.

- 1.2.5 Where words such as “reasonable”, “reliable”, “quality” and “convenient” are used, the Agency does not intend to define these narrowly or in any technical way. This is because (i) to do so might detract from the general policy goals of the Agency in conducting this process and the definitions and targets are not intended to be obligations, (ii) other regulations, guidelines and regulatory tools may be in use or proposed in relation to those matters (such as the end user charter, licence conditions, and emergency services regulations); and (iii) this is a starting point – we will with industry, be better able to refine the targets during the review period.
- 1.2.6 Finally, the definitions now set out for consideration and discussion at a public workshop are considerably simplified and refined. The Agency has decided to keep strictly to the requirements of the ECA initially, whilst we take into account the additional information provided and the suggestions made, conduct further research, and gather statistics and information. In this way the Agency hopes to (i) initially educate and inform the general public about the concepts in the most efficient and simplest way possible, (ii) build on the foundations laid here, in the next review period, and (iii) gather supporting statistics with which we can improve the definitions in a justifiable way.

2 REVIEW OF RESPONSES TO DISCUSSION PAPER

2.1 General points made

- 2.1.1 Vodacom and some other 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 could the Agency consider universal service regulation to achieve a

specific social goal. USAASA is not aware of this approach being taken anywhere else in the world, where similar countries in terms of development face the sort of access and take up difficulties that we face in South Africa. Accordingly no such study will be undertaken at this point. Review of the market will be carried out by USAASA in terms of section 82(4)(c) of the ECA once the basic principles of universal service and universal access have been determined as provided for under the ECA.

- 2.1.2 NAB and other respondents made a useful contribution to the Agency understanding 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 will be aware of these points in the approach to BS. It is likely that this area will require further review as convergence takes hold.
- 2.1.3 Many of the responses pointed out that although there is almost 95% 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 being available). USAASA agrees with these assessments and has therefore made amendments to the suggested definitions. There were a number of contrary suggestions in relation to defining an "area", and some recommended municipalities, whilst others suggested that provinces might be more appropriate. Still others suggested that an "area" might be determined by the number of people living in it. Since the report is intended to be a platform for determining targets and a starting point for definitions, we have considered the various suggestions and decided that areas should be determined with reference to officially demarcated places, as determined by statute. We have also made recommendations in relation to numbers of people constituting a minimum threshold for coverage and the achievement of targets.
- 2.1.4 Some of the responses 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 service and universal access 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 service and universal access in terms of its complete mandate spelt out in the ECA. Therefore, USAASA will be exploring ways in which to encourage and facilitate the development of applications and content as well as facilitate use of services. This might include studies to assess demand and readiness within communities for e.g. 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.

- 2.1.5 The MDDA suggested that more attention be paid to the availability of commercial broadcasting services in addition to public and community BS, and made additional helpful remarks more in keeping with their policy goal however, than with the mandate of USAASA.
- 2.1.6 ICASA was concerned that universal service and access should also be considered in relation to postal services. Whilst the concept of "universal postal service" is internationally recognized, and although ICASA is tasked with the regulation of postal services, these are not ECS and do not fall to be regulated under the ECA. Therefore USAASA is not able to give consideration to this. ICASA has also given consideration to the definition of "area" and wished the proposed definitions to allow for exceptions in the case of specific areas where the population levels were lower than the threshold proposed in the target. Since the targets are simply that – targets – and although we understand that ICASA is concerned that smaller and poorer communities be served, the initial starting point for the project and the first set of definitions and targets will be reviewed in the next 2 years. During this period it is hoped that a more general level of universal service and access will be achieved, and it will then be possible to assess how best to address more marginalized communities.
- 2.1.7 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 well be

premature from a practical point of view, but as it is a national priority, it is addressed within the definitions in a flexible and forward-looking way.

2.2 Universal Service

2.2.1 The proposed definition in the Discussion Paper is: “***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 BS.***”

2.2.2. The proposed universal service definition suggests as the targets, a minimum set of services, according to the type of service listed below:

2.2.2.1. In respect of 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”;

2.2.2.2. In terms of voice services, that every household has access to a reliable connection in the household; and

2.2.2.3. In terms of data services, that every household that demands it has access to reliable Internet services.

2.2.3 Distributed throughout the Paper are the questions relevant questions to the proposed definition, as these were posed in the Discussion Paper, and summarized underneath those 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 ECA?

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?

- 2.2.4 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".
- 2.2.5 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.
- 2.2.6 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.

- 2.2.7 In relation to over-the-air broadcasting Antelope suggest that the programmes and services in a locality are the same for all.
- 2.2.8 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.
- 2.2.9 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 ECA but new and advanced ICT services should be included once basic service targets are reached.
- 2.2.10 ECS, ECNS and BS within a minimum basket should be priced such that purchasing them is within the means of the public including low income population, according to MWeb, and the Agency should have regard to "actual needs".
- 2.2.11 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.

- 2.2.12 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”.
- 2.2.13 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.
- 2.2.14 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.
- 2.2.15 Smile re-defined 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.
- 2.2.16 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 non-use 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.
- 2.2.17 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.

- 2.2.18 The SABC felt that universal service should be the sum of various services offered by licensees taking into account technology-neutral services – not every area will have access to the same services. The minimum set should be radio service in the most appropriate language of the area, as FM receivers are affordable compared to TV and radio is mobile.
- 2.2.19 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.
- 2.2.20 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 in addition to voice should be included in the minimum set, but not all services need be provided simultaneously.
- 2.2.21 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 for 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).

- 2.2.22 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.
- 2.2.23 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.
- 2.2.24 Several respondents made the point that in the absence of 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.

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

- 2.2.25 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 purchasing 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.
- 2.2.26 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.
- 2.2.27 Smile recommended that affordability be measured in terms of the average ECS penetration rate for a particular service in a particular area.

- 2.2.28 Vodacom suggested that affordability should be measured in the context of the definition of needy people.
- 2.2.29 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.
- 2.2.30 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.
- 2.2.31 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 subsidization required.
- 2.2.32 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 ECA?

- 2.2.33 Some respondents suggested that ECNS may be a wholesale concept so therefore it was omitted from the ECA definition. Vodacom took this further by saying that ECNS was nevertheless a requirement to provide service therefore universal access must precede universal service.

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

- 2.2.34 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.

- 2.2.35 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?

- 2.2.36 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 people's communications capabilities rather than specific ECS and allow them to choose to suit their capability.
- 2.2.37 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 or DQ because there is a legal obligation to provide these in any event.
- 2.2.38 NAB stated that it was premature to consider a minimum service basket until digital migration is complete.
- 2.2.39 UNISA suggested that Internet services should be included in universal service.
- 2.2.40 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?

- 2.2.41 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.

2.2.42 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).

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

2.2.44 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.

2.2.45 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.

2.2.46 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).

2.3 Universal Access

2.3.1 The proposed definition in the Discussion Paper is: ***“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.”***

2.3.2 The suggested universal access targets according to each type of access are:

2.3.2.1 For broadcasting, the target is that each district municipality has:

- A community radio in their preferred language
- A public sound broadcasting service in their preferred language

- A public broadcasting television channel of their preference

2.3.2.2 For voice services the target is:

- 100% quality geographical coverage
- The access to telephony should be within one km in rural areas and 500m in urban areas

2.3.2.3 For data access, a public broadband internet access point should be available per municipal ward, or per population of greater than 20,000. Broadband (in the context of universal access and hence relating to public access notes) needs to be defined and regularly reviewed by:

- Download and upload peak speeds
- Download and upload average throughputs (per user terminal connected to the node)
- Bit caps
- Bandwidth and bit cap shaping (local v international bandwidth, local v international bit cap, and application sharing)
- Distance from the access network or switch to the extent that this has other implications than those already covered above
- Price as related to the above service levels

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?

2.3.3 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).

- 2.3.4 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 area which they inhabit. Antelope suggested one phone per 100 inhabitants.
- 2.3.5 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.
- 2.3.6 The DOC went further to require public Internet access points per 10,000 population and services to cater for diverse needs of consumers.
- 2.3.7 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.

- 2.3.8 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.
- 2.3.9 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.
- 2.3.10 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.
- 2.3.11 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) and affordable access to publicly available ECNS, ECS and BS on a non-discriminatory basis. Radio should be 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.

- 2.3.12 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.
- 2.3.13 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.
- 2.3.14 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.
- 2.3.15 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?

- 2.3.16 Antelope and other respondents stated that “communities” might mean similarly situated people not only by geography but characteristics, like deafness or other disability.
- 2.3.17 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 ECA 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.

- 2.3.18 In Vodacom's view, "area" is the same as "community".
- 2.3.19 The SABC felt that "area" should be geographical.
- 2.3.20 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.
- 2.3.21 UNISA was of the view that "communities" includes local and national communities, but was not specific about areas.

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

- 2.3.22 Antelope suggested in relation to broadcasting, this would require access to a physical TV with at least one language per community available.
- 2.3.23 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.
- 2.3.24 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.

- 2.3.25 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.
- 2.3.26 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?

- 2.3.27 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.
- 2.3.28 The SABC suggested the words “preferred language” should be replaced with the words “most relevant language”.
- 2.3.29 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?

- 2.3.30 Respondents had no suggestions in this regard.

2.4 Under-Serviced Areas

- 2.4.1 The draft recommendation in the Discussion Paper is: *“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.”*

- 2.4.2 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?

- 2.4.3 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.
- 2.4.4 BIQ suggested changing national to provincial percentages to be used for growth rates and average income.
- 2.4.5 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 emphasize the rollout of ECNS to under-serviced areas then shift to provision of ECS.
- 2.4.6 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.
- 2.4.7 Smile agreed that under-serviced are 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 (ie, their emphasis and their recommendation is on affordability not availability).

- 2.4.8 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-served 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.
- 2.4.9 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.
- 2.4.10 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.
- 2.4.11 UNISA felt that the definition is not adequate but that it might be useful to introduce the notion of asymmetric interconnection rates for under-served areas to ensure viability of operators within those areas.
- 2.4.12 Infracore recommended an amendment to the definition so that an under-served 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-served 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?

- 2.4.13 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.
- 2.4.14 Smile felt the Agency should only at ECNS and BS as these are the only services able to get subsidies for construction and expansion of networks in under-served areas.
- 2.4.15 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.
- 2.4.16 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?

- 2.4.17 MWeb felt that an area could well be under-serviced if covered only by one ECNS.
- 2.4.18 Smile stated that "area" should mean urban and non-urban since under-served people live in both types of areas.

2.4.19 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.

2.4.20 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?

2.4.21 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.

2.4.22 Smile stated that ICASA has to define this not USAASA, and if this is legally possible given the wording of the ECA, 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.

2.4.23 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.

- 2.4.24 K and P also felt that there should be no automatic entitlement for operators providing services in an under-served 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, subsidization policy and the priority focus areas.
- 2.4.25 UNISA suggested that the price of service and household income should determine whether an area is under-served. 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-served areas be different in respect of sections 88 and 90, respectively?

- 2.4.26 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).
- 2.4.27 The NAB confirmed that section 90 does not refer to BS, only to ECNS.
- 2.4.28 Vodacom stated that the fund can apply only for designated under-served 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 ECA – 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-served 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?

- 2.4.29 Antelope suggested that areas should be as small as possible and that penetration should be a secondary criterion in identifying under-serviced areas.
- 2.4.30 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.
- 2.4.31 The NAB suggested that factors would include absolute levels of service relative to population density and economic strength, particularly poverty levels.
- 2.4.32 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.
- 2.4.33 The DOC suggested that section 82(3)(a)(i) means small area, local authority or district. The Department also suggested that household income should be considered as a factor.
- 2.4.34 Smile regarded penetration per ECS type as key, not coverage.
- 2.4.35 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 as per 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 or not 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.

- 2.4.36 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, i.e. 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.
- 2.4.37 Infraco was concerned that "area" should mean district municipality as its 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 (e.g. in Malaysia it is 20% below the average penetration)?

- 2.4.38 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, e.g. 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.

- 2.4.39 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 subsidized.

2.5 Needy Persons

- 2.5.1 The proposed recommendation in the Discussion Paper is: ***"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?

- 2.5.2 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 organization 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.
- 2.5.3 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.
- 2.5.4 MWeb agreed with the definition but suggested linking the means test to geography, age, disability, and that applicants must also demonstrate that they are disadvantaged by this within a particular area.
- 2.5.5 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 organizations looking after people in crisis situations and emergencies), geographic medical conditions and other special social needs to it.

- 2.5.6 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.
- 2.5.7 e.tv did not agree with the definition as they also said BS is not provided at commercial rates.
- 2.5.8 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).
- 2.5.9 Neotel and the SABC agreed with the definition.
- 2.5.10 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 e.g. age, geography, or disability. Those who cannot access services defined as "basic" should be regarded as needy.
- 2.5.11 UNISA suggested that all those who cannot afford service in terms of low household income should be subsidized, 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?

- 2.5.12 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.
- 2.5.13 MWeb suggested LSM, income and expenditure, social grants and demographic factors could be relevant.
- 2.5.14 The DOC suggested that the Agency devise criteria for qualification by all affected groups within guidelines and publish these in due course.
- 2.5.15 The NAB suggested that a means test should apply to those who are financially indigent, but this would be likely to marginalize 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.
- 2.5.16 Smile recommended that a means test should be agreed on in the definition to ensure consistency, e.g. 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.
- 2.5.17 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 South African Social Security Agency.

- 2.5.18 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?

- 2.5.19 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.
- 2.5.20 Antelope suggested that the Agency work through existing organizations and institutions that serve needy persons directly, e.g. homes for the elderly or disabled. Those organizations in their view can apply for assistance and must demonstrate good standing and a plan, e.g. providing facilities at the home or centre, mobile communications facilities, free phone advice services, and personal calling allowances.
- 2.5.21 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.

- 2.5.22 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.
- 2.5.23 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.
- 2.5.24 Vodacom suggested subsidies be paid to licensees.
- 2.5.25 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.
- 2.5.26 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.
- 2.5.27 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.
- 2.5.28 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 criteria to be met and criteria to meet relevant socioeconomic conditions should be applied by the Agency.

3 RECOMMENDATIONS

Having considered the context and history, international precedent, responses to the Discussion Paper and the mandate of the Agency, the following proposals will be considered further in public workshops.

3.1 Universal Access

- 3.1.1. Universal Access is defined in the ECA 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".
- 3.1.2. Chapter 14, and specifically section 82(3)(a)(i) provides that the Agency must make recommendations to enable the Minister to determine what constitutes "universal access by all areas and communities in the Republic to electronic communications services and electronic communications network services".
- 3.1.3. "Community" is defined in the ECA as including - "a geographically founded community or any group of persons or sector of the public having a specific ascertainable common interest".
- 3.1.4. 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 household or person can gain access to such services.

3.2 Revised proposed definition of universal access:

- 3.2.1 Proposed definition for each of ECS and BS:

- 3.2.1.1 ***"Universal access for ECS is provided where all the inhabitants of a relevant community or geographic area as defined in the targets¹, are afforded convenient access (regardless of disability or other similar status)***

¹ The "area" is further defined in the targets with reference to the type of service.

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 messaging²."

3.2.1.2 *"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."*

3.2.2 The following universal access targets apply:

3.2.2.1 For **voice ECS** the targets are:

3.2.2.1.1 Availability to 100% of the population within the licensee's licensed coverage area, and 100% coverage of all mapped public roads, which is reliable. For purposes of the definition, "convenient" means that there should be at least 1 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 1 km³.

3.2.2.2 For **data ECS** the target is:

3.2.2.2.1 At least 1 public broadband or public internet access point (POP) for every geographic area inhabited by more than 20,000 people;

3.2.2.2.2 A public internet access centre accompanying the POP;

3.2.2.2.3 "Broadband" should be defined and regularly reviewed with reference to:

- (i) Download and upload peak speeds;
- (ii) Download and upload average throughputs (per user terminal connected to the node);

² Although the ECA initially requires the provision of free calls to emergency services, it also suggests that licensees should allow access by messaging. Several respondents felt this was a useful inclusion in the basket of services.

³ Note that it is proposed that where a licensee is not able to meet the targets, they would be able to motivate to the Fund, provided they qualify, for a subsidy, in terms of the definition of "under-serviced area", if adopted by ICASA.

- (iii) Volume caps;
- (iv) Bandwidth shaping (local v international bandwidth, local v international volume cap, and application sharing);
- (v) Distance from the core network and the extent of the access network; and
- (vi) Price in relation to those service levels.⁴

3.2.2.3 For **BS**, the targets are applicable for district municipality:

- 3.2.2.3.1 A community radio BS broadcasting in the most relevant language for that area;
- 3.2.2.3.2 A public radio BS broadcasting in the most relevant language for that area; and
- 3.2.2.3.3 A public or community television BS⁵.

3.2.3 Guidelines applicable to all the targets:

- 3.2.3.1 Each access point should be housed in adequate shelter;
- 3.2.3.2 Access should be provided at least 12 hours a day and during the hours of 08h00 to 17h00;
- 3.2.3.3 Those persons who require assistance in using the community access point, the ECS and BS or the subscriber equipment (as defined in the ECA) should be assisted to the extent practicable; and
- 3.2.3.4 Access to ECS and BS must be provided at affordable rates to the majority of persons in the geographic area.

⁴ These are deliberately left open for review. Broadband as a reality is still not within reach and only once our practical experience of the service has improved will we be able to insert realistic targets that are also in line with government policy in this area.

⁵ Please see our comments in relation to commercial BS under "universal service" at paragraph 3.3 below.

3.3 Universal Service

- 3.3.1 Universal Service is defined in the ECA as “universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14”.
- 3.3.2 Chapter 14, and specifically section 82(3)(a)(ii), provides that the Agency must make recommendations to enable the Minister 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”.
- 3.3.3 The definition of “universal service” is therefore not dissimilar to that of universal access, save for the difference in the nature of provision, outlined above in section 3.1.
- 3.3.4 One of the keys to defining universal service is “affordability”. The Agency recommends that “affordability” be measured be established with reference to the ITU definition, namely that a service is affordable to all citizens. The ITU acknowledges that this is a difficult concept to implement but suggests it be implemented by some reasonably acceptable benchmark.⁶ In the future, further studies and statistics can be assimilated and undertaken. For now, USAASA has simply stated that access should be affordable, and will assess affordability on an ongoing basis. The definition of “needy person” and the application of this term as set out in 3.4 below, is also intended to assist in the assessment of affordability and in helping those who are needy, to achieve universal service.
- 3.3.5 The Agency has not included quality of service targets but notes that ICASA regulates quality of service under a set of regulations in terms of the ECA.
- 3.3.6 In relation to broadcasting, the Agency has extended the target to imply that coverage must be achieved nationally, but reception obviously depends on whether a person has a radio or TV set. The ability to gain access to equipment has been considered in the definition of “needy person”.

⁶ USAASA is awaiting the release of the publication of the DOC “Cost of Communications Study” for guidance

3.3.7 The Agency has determined the minimum set of services to which access must be provided with reference to suggestions made by the majority of respondents, and its objective which is to provide a solid starting point for the immediate future, with regular reviews, and targets that are appropriate and in line with government priorities. These minimum targets are in line with government priorities to date, but will be reviewed with the goal of introducing broadband targets and targets for commercial TV BS. Educational services, health services for a defined group, and public information and communications services constitute obligations that may be imposed by ICASA or other government entities in due course. The definition for BS has been created with reference to access having been provided over an ECN, since this is what is anticipated in the Act, as set out above.

3.3.8 The Agency has also been mindful of the cost burden of defining universal service too broadly, which will be likely to have an impact on the cost of universal service obligations. We have retained the minimum set with reference to licence type since this is where the definition must start having regard to the requirements of the ECA.

3.4 Revised proposed definition for universal service:

3.4.1 Proposed definitions for each of ECS and BS:

3.4.1.1 *“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.”*

3.4.1.2 *“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.”*

3.4.2 The proposed targets for universal service are:

3.4.2.1 **For all types of ECS**, that every household has affordable access on demand; and

3.4.2.2 In respect of **BS**, that every household in a given geographic area should be able to receive all the BS licensed to be provided in that area⁷.

3.5 Under-serviced Areas

3.5.1 An “under-serviced area” is defined in the ECA as “the geographically identified areas defined by the Authority”.

3.5.2 Section 88(1) of the ECA provides that money in the USAF may be utilized 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(3) provides that the list of designated under-serviced areas eligible for construction payments from the USAF must be reviewed at least bi-annually.

3.5.3 Importantly, section 88(2) provides that ICASA must define under-serviced areas for the purposes of section 88(1). The Agency's recommendation is therefore only that – a recommendation to ICASA. To the extent that ICASA may wish to define areas without reference to whether they are rural or urban or peri-urban, or to refer to areas by referring to the number of people, or to create exceptions to the general rule applied in this regard, that will be up to ICASA.

3.5.4 The purpose of defining under-serviced areas is more specific than the purpose of defining universal access and universal service. Defining under-serviced areas will lead to a list of under-serviced areas eligible for payments from the USAF.

⁷ Note that there is no provision made at this stage for access to commercial BS in the context of universal access. However, at the universal service level we have provided that a person should be able to receive all BS licensed to be provided in his or her area. In due course commercial BS targets for universal access will be set.

- 3.5.5 One important note - just because an area meets the definition of under-serviced areas, does not necessarily mean that a subsidy will be provided in respect of that area out of the USAF. The Agency must still develop procedures for applying for subsidies, and it may be that licensees will have to compete for those USAF funds (as they are most surely going to be limited in amount).
- 3.5.6 Some respondents suggested measuring the levels of service within an area by measuring the levels of penetration where infrastructure is available, as well as availability of physical infrastructure.
- 3.5.7 The Agency notes concerns raised by other respondents that people may choose not to use services that are available within an area, which may skew penetration statistics. However, on review of the data available, the Agency is convinced the most important reason preventing persons from subscribing to service is not the lack of need or desire, but the absence of adequate or any infrastructure, which may be coupled with a lack of financial ability.
- 3.5.8 As we set out in the introduction, the majority of respondents suggested that "area" should be designated as small as possible, and changes have been made to the definition to take account of these suggestions. Since there are several official sources of definitions of areas, the Agency considers it helpful to refer to those in the definition. In point of fact, subsidies may be available for construction in those areas without infrastructure or without adequate infrastructure, and accordingly without service, whatever they are called.
- 3.5.9 Finally, the Agency notes suggestions made by respondents that universal access targets would have to be achieved first before under-serviced areas can be determined. Whilst there may be a certain logic in this, there are no doubt numerous factors to be taken into account as indicated by the responses we received as to what constitutes under-serviced areas. In any event, the Agency understands that in the relevant regulatory framework, the two definitions can be comfortably defined and applied at the same time.
- 3.5.10 Changes made to the suggested definition, have however, taken account of the fact that areas might be under-serviced for one but not all types of services provided under the different categories of licence, and that despite the presence of ECNS, there may

nonetheless be inadequate ECNS, ECS or BS, and has decided to suggest recommended guidelines to ICASA to be applied alongside the definition of under-serviced area, to enable the determination of whether or not an area is under-serviced.

- 3.5.11 The guidelines take their lead from the targets set out in relation to the provision of universal access, as this seemed to the Agency the most appropriate way to meet the requirements of section 88, whilst offering certainty to licensees in relation to which areas might be deserving of construction subsidies.
- 3.5.12 Access must be provided on a non-discriminatory basis. The definition for BS has been created with reference to access having been provided over an ECN, since this is what is anticipated in the Act, as set out above.

3.6 Revised proposed recommendation for under-serviced area

- 3.6.1 The revised recommendation for each of ECS and BS is:

3.6.1.1 *"An under-serviced area for purposes of ECS, is any municipality or smaller geographic area as defined in any official publication in the Republic:*

3.6.1.1.1 *in which no ECN has been constructed; or*

3.6.1.1.2 *where an ECN has been constructed, but it does not or will not adequately cover the area; or*

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

3.6.1.2 *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.*

3.6.2 Recommended guidelines applicable to the determination:

- 3.6.2.1 An ECN will be presumed not to exist or to provide inadequate ECS coverage and/or ECS in the relevant area if the targets for universal service or universal access have not been achieved. In other words:

- 3.6.2.1.1 an ECN has not been installed at all or has been installed in a way that does not or cannot enable the provision of ECS to a mapped road in the relevant area; and/or
 - 3.6.2.1.2 a person has to walk more than 1km to access a voice ECS; and/or
 - 3.6.2.1.3 there are more than 2,000 inhabitants in the area but there is no public telephone; and/or
 - 3.6.2.1.4 there is no public broadband or public internet (POP) in an area of more than 20,000 people, and/or no public internet centre accompanying the POP.
- 3.6.2.2 An ECN will be presumed not to exist or to provide inadequate BS coverage and/or BS in the relevant area as set out in the definitions of universal access for BS and universal service for BS, if there is no:
- 3.6.2.2.1 community, commercial, or public sound BS broadcasting in a language relevant to that area; and/or
 - 3.6.2.2.2 public, commercial, or community television BS.

3.7 Needy Persons

- 3.7.1 Section 88(1) of the ECA provides that money in the USAF may be utilized 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".
- 3.7.2 Person is defined in the ECA as "a natural or juristic person". "Person" may also however, include groups of persons linked by common characteristics including geography or personal circumstances.
- 3.7.3 Section 88(4) of the ECA provides that the Minister may, for the purposes of paying USAF subsidies for the assistance of needy persons, determine:
- 3.7.3.1 Types of needy persons to whom assistance may be given;
 - 3.7.3.2 The person who must apply for assistance and the manner in which such application must be made; and

3.7.3.3 The manner in which and person to whom subsidies may be paid.

- 3.7.4 As with under-serviced areas, the purpose of defining needy persons is therefore more specific than the purpose of defining universal access and universal service. It will determine the types of needy persons to whom assistance may be provided out of the USAF for the purpose of them accessing ECS and BS.
- 3.7.5 One further introductory point is important to make. The definition of “needy persons” does not mean that every person who falls within the definition necessarily will be entitled to a subsidy provided out of the USAF. The Agency must still develop procedures for applying for such subsidies (after any determinations made by the Minister in terms of section 88(4)), and it may be that persons or licensees will have to compete for those funds (as they are most surely going to be limited in amount).
- 3.7.6 Several respondents suggested that the Agency liaise with other government departments charged with the administration of funds to persons dependent on grants or pensions. The Agency will do so while it is in the process of developing its own application and qualification procedures for USAF subsidy payments.
- 3.7.7 The Agency considers two other proposals to be similarly helpful. The proposals are to include persons within the definition who already qualify for assistance by virtue of their financial position, using criteria put in place by other institutions. This has the double virtue of making use of established organizations with means tests that have been tested as a benchmark, and also using the method of proof of need that applicants will already be used to submitting to those organizations.
- 3.7.8 A negative factor to be taken into account, is that persons without any form of income do not presently qualify for assistance unless they also have a disability or are elderly, or have a child. These persons may nonetheless have a need for communications services. To take account of the latter group, one respondent has suggested a means test requiring income of below R800 per month, or a social grant including pensioners or the disabled. Another respondent suggested that an appropriate benchmark is an income of less than R15 per day.

- 3.7.9 Until the Agency can carry out targeted research in this regard, we will rely on existing means tests and standards for qualification. We anticipate that within the next review period, we will have statistics supporting the adoption of a more appropriate test for “needy” in the context of access to ECS and BS.
- 3.7.10 Some respondents suggested linking needy persons to under-serviced areas. The Agency does not agree with the suggesting as it ignores the fact that living in an under-serviced area does not make one a needy person, and similarly, not living in an under-serviced area does not ensure that a persons is not a needy person.
- 3.7.11 In relation to BS, the Agency takes the point that as commercial free-to-air services are “free” (other than in relation to a licence fee that is payable for a TV), and thus in relation to BS, commercial cost of services may not be a relevant factor. Coverage or the lack of it is addressed within the definition of under-serviced area and need not be addressed here. The issue of subsidization of set top boxes is not however dealt with in this definition, as this is presently the subject of debate in other fora.
- 3.7.12 Finally, the methodologies suggested by respondents as to how applications might be made and subsidies paid differed quite considerably. Whilst many respondents suggested that applications for subsidies might be made by agents including operators on behalf of needy persons, the monitoring of the application of subsidies then paid to these agents and licensees was less clear. Payments in the form of service vouchers to applicants directly seems to be the simplest way to police both applications and payments. Contributions towards equipment on the other hand, seem to require participation by operators or groups applying on behalf of needy persons, whose own internal controls would then have to be applied and their accountability would be to organizations other than the Agency, although reports could be required from those organizations in relation to how funds were spent, with validation by operators or manufacturers and installers. We will give this further consideration in the project devoted to application of the fund.

3.8 Revised proposal regarding needy persons

3.8.1 *“Needy persons” are persons who qualify through the application of a means test:*

3.8.1.1 *devised by the Agency; or*

3.8.1.2 *devised by one or more public services organizations or institutions, which organizations or institutions are selected for this purpose by the Agency.”*

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

The Agency thanks all those who took the time to respond to the Discussion Paper and looks forward to engaging further in debate at the workshops.

APPENDIX 1: GLOSSARY OF TERMS

BS – broadcasting services, as defined in the ECA

CLI - calling line identification

ECA – Electronic Communications Act, 2005

ECNS – electronic communications network services, as defined in the ECA

ECS – electronic communications services as defined in the ECA

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 ECA

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 ECA

APPENDIX 2: LIST OF RESPONDENTS TO THE DISCUSSION PAPER

1. Antelope Consulting (**Antelope**) for Mobile Telephone Networks (Pty) Ltd (**MTN**)
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 (**etv**)
7. Independent Communications Authority of South Africa (**ICASA**)
8. Media Development and Diversity Agency (**MDDA**)
9. MWEB Connect (Pty) Ltd (**MWeb**)
10. Neotel (Pty) Ltd (**Neotel**)
11. National Association of Broadcasters (**NAB**)
12. kgsp consult and Pygma Consulting (**K and P**)
13. South African Broadcasting Corporation Limited (**SABC**)
14. Smile Communications (Pty) Ltd (**Smile**)
15. Professor PH Potgieter and Mrs NC Lesame, University of South Africa (**UNISA**)
16. Vodacom (Pty) Ltd (**Vodacom**)