

Economic Community of West African States, African Regional Bodies

Supplementary Act A/SA.6/01/07 on Universal Access/Service Act 1-6 of 2007

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Economic Community of West African States

Supplementary Act A/SA.6/01/07 on Universal Access/Service Act 1-6 of 2007

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The High Contracting Parties

MINDFUL of Articles 7, 8 and 9 of the ECOWAS Treaty as amended establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

MINDFUL of Decision A/DEC.14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

MINDFUL of Decision A/DEC.11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

MINDFUL of Decision A/DEC.12/12/94 on tariff-setting and telephone traffic in the area of telecommunications;

MINDFUL of Decision A/DEC.16/5/82 on the telecommunication program of ECOWAS;

CONSIDERING that the direct interconnection of modern telecommunication systems between Member States is a prerequisite for sub regional economic integration;

NOTING that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

CONSIDERING that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

AWARE of the need to provide all of the Community's populations, regardless of geographic location, with a minimum set of high-quality and affordable telecommunication services;

RECOGNIZING that the concept of universal service is bound to evolve as a result of technological progress, market developments and user requirements;

WISHING to achieve, as rapidly as possible, the digital opening-up of the Member States;

ON THE PROPOSAL of the meeting of the Ministers in Charge of Telecommunication held in Abuja on 11th May 2006

ON THE RECOMMENDATION of the fifty-seventh session of the Council of Ministers held in Ouagadougou from 18 to 19 December 2006;

AGREE AS FOLLOWS

Chapter I Definitions, objectives and scope

Article 1 – Definitions

1. For the purposes of this Supplementary Act, the definitions contained in Supplementary Act A/SA.1/01/07 shall apply.
2. The following additional definitions shall also apply:
 - "**Universal access/service**": access to a basic group of services as defined in this Supplementary Act, within the territory of the Member States of ECOWAS, for all citizens, regardless of their geographic location, at affordable rates.
 - "**Public payphone**": a telephone station made available to the public, for use against payment in the form of coins and/or credit or debit cards and/or prepayment cards, including cards used with numbering codes.
 - "**Public telephone network**": a telecommunication network used to provide publicly accessible telephone services. Between network termination points, it permits the transmission not only of voice communication but also of other forms of communication such as facsimile and data transmission.
 - "**Publicly accessible telephone service**": service made available to the public to enable people to make and receive domestic and international calls, and to access emergency services by dialing one or more numbers established for that purpose in national or international numbering plans. It may also include the provision of one or more of the following services, where applicable: operator assistance; telephone and/or directory information; public payphones; other specialized services; special services for disabled persons or persons having specific social needs; and non-geographic services.

Article 2 – Objectives and scope

1. The purpose of this Supplementary Act is to harmonize conditions so as to enable all citizens to connect to communication networks accessible to everyone at affordable rates.
2. This Supplementary Act lays down the rules applicable to universal access/service within the countries of the ECOWAS zone, and sets out in particular the role of Member States in establishing and implementing rules in the following areas:
 - a) creating a regulatory and policy environment favorable to universal access/service;
 - b) designing and identifying regulatory reform measures;
 - c) promoting innovative regulatory policies;
 - d) assuring access to information and communication infrastructures;
 - e) providing subsidies for financing and managing universal access/service policy;
 - f) assuring cooperation in the provision of service;
 - g) assuring the oversight and review of policies;
 - h) establishing an obligation to put emergency services in place.

Chapter II Role of the authorities

Article 3 – Creation of a regulatory and policy environment conducive to universal access/service

Member States shall take all necessary measures in order:

- a) at the highest possible political level, to identify ICT as a tool for socio-economic development, designating to that end a national focal point such as a ministry, government department or well-known individual to champion the cause of ICT development;
- b) to establish national regulatory authorities and provide them with the means to play a key role in implementing universal access policies, first by addressing the market efficiency gap (letting the market deliver universal access/service), and then by tackling the true access gap;
- c) to make national regulatory authorities responsible for implementing policies geared towards the provision of services that are of the highest possible quality, reliable and affordable, and which satisfy the needs of users both present and future;
- d) to develop their communications frameworks through telecommunication sector, institutional and legislative reform in line with international best practices but with due regard for local requirements;
- e) to include, in the definition of universal access/service policies, all citizens and elements of the population regardless of ethnic origin, socio-economic level or geographic location.

Article 4 – Designing policies and determining regulatory reform measures

1. Member States shall take all necessary measures in order to:

- a) formulate a national policy that identifies appropriate and realistic universal access/service objectives which take into account the differences between universal access (public access to ICTs) and universal service (private or household access to ICTs);
- b) as frequently as possible, conduct public consultations with stakeholders to identify their needs and modify universal access/ service policies, regulations and practices accordingly;
- c) design universal access/service policies, regulations and practices to create incentives for the private sector to extend universal access to communications services;
- d) use a multi-pronged approach to addressing universal access/service challenges and opportunities, relying on complementary strategies to meet the targets that have been set;
- e) establish a fair and transparent telecommunication regulatory framework that promotes universal access to ICTs while allowing the market to address universal access/service to the greatest extent possible, intervening only where the market has failed or seems likely to do so. This entails:
 - i) promoting technologically neutral licensing practices enabling service providers to use the most cost-effective technology to provide services for end users;
 - ii) adopting a transparent and non-discriminatory interconnection framework in which interconnection rates are linked to costs;
 - iii) reducing regulatory burdens to lower the costs of providing services to end users;
 - iv) promoting competition in the provision of a full range of ICT services to increase access, affordability, availability and use of ICTs.

2. Where it is necessary for regulators and policymakers to intervene to facilitate the delivery of universal access/service:
 - a) public access strategies should be explored in addition to private universal service strategies;
 - b) both pay and play strategies should be employed, but where possible operators should be encouraged to invest in rural, remote and low-income populations and areas;
 - c) countries can use regulatory reform as the first step in achieving universal access, recognizing that further steps may be necessary to achieve ubiquitous access to ICTs, e.g. in rural areas or for users with special needs;
 - d) appropriate licensing schemes for rural service providers could be set up to meet the needs of unserved and underserved areas.

Article 5 – Promoting innovative regulatory policies

Member States shall:

- a) promote access to low-cost broadband interconnectivity from the local level to the international level, involving government authorities, companies and non-governmental organizations;
- b) adopt regulatory frameworks that support applications such as e-education and e-government;
- c) adopt policies aimed at increasing access to the internet and broadband services, based on their own market structure, such that the policies reflect diversity in culture, language and social interests;
- d) ensure that national regulatory authorities work with stakeholders to expand broadband coverage and use through multi-stakeholder partnerships, in parallel to government initiatives to promote financially sustainable programs, particularly with a view to bridging the market gap that may exist in some countries;
- e) adopt regulatory regimes that facilitate the use of all transport media, whether wire line, power line, cable, wireless or any other new technology;
- f) ensure that national regulatory authorities put forward initiatives for encouraging public access to broadband and internet services in schools, libraries and other community centers;
- g) ensure that national regulatory authorities implement harmonized spectrum allocations consistent with the ITU radio communication conference process and each country's national interest.

Chapter III

Access to information and communication infrastructures

Article 6 – General principles

With a view to facilitating access to information and communication infrastructures, Member States shall:

- a) within a competitive framework, foster the introduction of innovative services using new technologies at an affordable level of pricing;
- b) promote affordable ICT equipment, which could include national manufacturing of ICT equipment, reduced customs tariffs and duties and end-user loans to make ICT equipment more affordable;
- c) develop a full range of public access options, including the creation of public telecenters and multipurpose community centers;
- d) develop local projects and input, including content that is useful for local populations, thereby increasing their relevance and hence their long-term financial sustainability;

- e) institute education and training programs to encourage the use of ICTs and their impact on local people, thereby increasing the long-term financial sustainability of ICT projects.

Article 7 – Availability of universal access/service

Without prejudice to more generous domestic measures, Member States shall commit themselves to taking the necessary steps to ensure that, as a minimum, the entire population within their territories have access to the services listed in this chapter, regardless of their geographic location and at affordable prices.

Article 8 – Provision of the telecommunication service

Member States shall ensure that requests for connection to a telecommunication network are satisfied by at least one operator and may, if necessary, designate one or more operators to that effect, such that all parts of the national territory are covered. The connection provided must be such as to enable the user to make domestic and international calls, send and receive voice messages and fax and data transmissions, and connect to the internet with an adequate transfer rate.

Article 9 – Directories and telephone information services

1. Member States shall ensure that:
 - a) a directory, which may be printed or electronic or both, containing the credentials of all subscribers, including their fixed and mobile telephone numbers, is made available to users in a form approved by the national regulatory authority;
 - b) at least one telephone information service covering all listed subscribers is available to all users, including users of public telephone booths;
 - c) companies providing the above services apply the principles of non-discrimination to the processing and presentation of information provided to them by operators.
2. Member States shall undertake to give effect to these provisions with all due respect for the applicable legal and regulatory provisions in force in regard to personal data and privacy protection. In particular, where subscribers expressly so request, their information shall not be included in any directory.

Article 10 – Emergency services

Member States shall ensure that emergency calls can be made free of charge from any fixed or mobile telephone, including telephone booths.

Article 11 – Public access and public payphones

1. In order, among other things, to enable users not subscribed to the telephone service to have access thereto, Member States undertake to ensure that public payphones are installed, under reasonable conditions, in terms of quantity and geographic distribution.
2. Without prejudice to more generous domestic legislation, Member States shall ensure that national regulatory authorities are in a position to impose schedules for the deployment of public payphones, with the aim of having at least one public payphone in each locality numbering 500 inhabitants or more by 31 December 2010. ECOWAS will monitor the implementation of this measure on an annual basis.

Article 12 – Specific measures in favour of certain social groups

Where the need exists, Member States shall take specific measures to ensure that users with disabilities or special social needs have equivalent and affordable access to publicly available telephone services, including emergency and directory services at an affordable price.

Article 13 – Reviewing the scope of universal access/service

1. With a view to monitoring and reviewing policies, Member States must, on the one hand, adopt measurable targets for improving connectivity and access to ICT use, which can be based on distance, population density or length of time needed to have access to ICTs, and, on the other hand, hold periodic reviews of universal access/service policies, regulations and practices in order to adapt to the evolving nature of ICT services and end-user needs.
2. Member States shall periodically review the scope of the universal service, in particular with a view to making proposals for its modification or redefinition. The first such review shall be held not later than two years following the date of entry into force of this Supplementary Act, and thereafter a review shall be held every three years.
3. The review shall take account of social, economic and technological developments, and shall have particular regard to data mobility and transfer rates for the technologies most widely used by the majority of subscribers. Member States shall inform the Commission of any changes.

Article 14 – Mandatory additional services

ECOWAS Member States may decide to make additional services accessible to the public, within their national territory, beyond those services that already come under the heading of universal service obligations as defined in this chapter.

Chapter IV

Implementation and management of universal access/service

Article 15 – Cooperation and management of universal access/service

Cooperation in this area must be explored on several levels:

- a) between the private sector and communities, so that where possible the market can deliver universal access/service;
- b) between communities, government and the private sector, to ensure that the access gap is dealt with in a manner that is relevant to communities;
- c) within government, to reap the full benefits of ICTs, beyond infrastructure and technology, and extending to health, education, agriculture and other sectors.

Article 16 – Arrangements for implementation

1. Member States shall determine the most effective and appropriate approach for ensuring the implementation of universal service, with due respect for the principles of objectivity, transparency, non-discrimination and proportionality. They shall endeavour to keep market distortions to a minimum, particularly where they take the form of service provision at rates or under conditions which differ from those normally prevailing in a commercial operation, while protecting the public interest.

2. To these ends, Member States may, where necessary, designate one or more companies to ensure the provision of universal service, as defined in Articles 7, 8, 9 and 10, such that all parts of the territory can be covered. Member States may designate companies or different groups of companies to provide different components of universal access/ service and/or to cover different parts of the national territory.
3. Where Member States designate companies to fulfill universal service obligations over all or part of the national territory, they shall do so through a mechanism that is effective, objective, transparent and non-discriminatory, and which does not exclude any company a priori.

Article 17 – Quality of the service provided by designated companies

1. Member States shall ensure that the companies entrusted with the task of providing users with the services referred to in Articles 7, 8, 9 and 10 of this Supplementary Act provide the national regulatory authority with a regular account of their activities and results achieved in that regard.
2. National regulatory authorities shall establish performance objectives for companies assuming universal service obligations pursuant to Articles 7, 8, 9 and 10 of this Supplementary Act, in accordance with the procedures described in the present article.
3. Pursuant to the Supplementary Act on the harmonization of regimes applicable to telecommunication network operators and service providers, individual licenses may specify results to be achieved for the provision of universal access/service.
4. An entity's persistent failure to achieve the performance objectives and quality levels specified for the implementation of Article 3 of this Supplementary Act may entail the application of sanctions by the national regulatory authority.
5. National regulatory authorities are entitled to require independent verification of an operators performance of the obligations incumbent upon it pursuant to Articles 7, 8, 9 and 10 of this Supplementary Act.

Chapter V

Financing and management of the universal access policy

Article 18 – Level and structure of prices

1. National regulatory authorities shall ensure that the universal service is provided to everyone at affordable rates. They may, at the request of the minister in charge of the sector, require companies designated pursuant to Article 14 to make available to low-income or special-needs users prices, options or schemes that differ from those normally prevailing in a commercial operation, particularly with a view to ensuring universal service.
2. The conditions under which such facilities are granted must be proportional, transparent and non-discriminatory, and publicly promulgated.

Article 19 – Calculating the cost of universal service

1. To assist national regulatory authorities in determining whether provision of the universal service places an unjustified burden on the companies designated as providers, Member States undertake to provide for the adoption of a method for calculating the costs of the universal service, based on net costs.
2. The net cost corresponds to the difference between the investment and operational costs associated with provision of the universal service and the relevant revenues. Relevant revenues are the direct and indirect revenues generated by the universal service.

3. The net cost of any special price-scheme offers made by an operator to certain categories of subscribers to ensure their access to the universal service shall be deducted from that operator's contribution to the universal service fund.
4. The calculation of the net cost of the universal service obligations shall be submitted for auditing by an entity that is unconnected with the body responsible for managing the fund. The result of the net cost calculation and the audit conclusions shall be made publicly available.

Article 20 – Funding of universal access/service

1. Funding and subsidies must be targeted, and are to be determined and delivered in a manner that is transparent, non-discriminatory, inexpensive and competitively neutral.
2. Subsidies can be provided using several means, including:
 - a) a universal service fund, which should be developed as a mechanism within a broader market-oriented approach to achieving universal access;
 - b) universal service funds can be financed by a broad range of market players, managed by neutral bodies such as regulators, and be used to kick-start public access projects that meet the needs of the local community;
 - c) governments may also consider a full range of other financing mechanisms;
 - d) competitive minimum subsidy auctions could be used, as an option, to reduce the amount of financing necessary for public access projects financed by a universal service fund;
 - e) public access projects can be designed to achieve long-term financial self-sustainability, especially where consideration is given to innovative low-cost technologies.

Chapter VI Final provisions

Article 21 – Time-frames for transposition

1. Member States shall take all necessary steps to adapt their national sectoral legislation to this Supplementary Act no later than two years following the date of its entry into force. They shall inform the Commission of those steps immediately.
2. The legal texts agreed to shall contain a reference to this Supplementary Act or shall have such a reference attached to them when they are officially published.

Article 22 – Implementation

1. When, based on this Supplementary Act, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the common market and concern implementation of the universal service development policy, Member States shall ensure that the measures and substantiating arguments are communicated to the Commission one month prior to their implementation.
2. The national regulatory authority shall take into consideration the observations of the Commission.
3. The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the national regulatory authority that they are incompatible with this Supplementary Act.

4. Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Commission for comment.
5. When Member States adopt transposition measures for this Supplementary Act, they shall ensure that the planned measures along with substantiating arguments are communicated to the Commission one month prior to implementation of the measures.
6. Member States shall take into consideration the observations of the Commission. The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the Member States that the measures proposed are incompatible with this Supplementary Act.
7. Member States shall communicate to the Commission any provisions of domestic law which they adopt in the field governed by this Supplementary Act.

Article 23 – Information report

Member States shall, no later than six months following the date of entry into force of this Supplementary Act, communicate to the Commission the steps taken or which are in the course of approval or implementation for the purpose of implementing this Supplementary Act.

Article 24 – Publication

This Supplementary Act shall be published by the Commission in the Official Journal of the Community within thirty (30) days of its signature by the Chairman of Authority. It shall also be published by each Member State in its National *Gazette* within the same time frame.

Article 25 – Entry into force

1. This Supplementary Act shall enter into force upon its publication. Consequently, signatory States and ECOWAS Institutions pledge to commence the implementation of its provisions on its entry into force.
2. This Supplementary Act is annexed to the ECOWAS Treaty of which it is an integral part.

Article 26 – Depository Authority

This Supplementary Act shall be deposited with the Commission which shall transmit certified true copies thereof to all the Member States and shall register it with the African Union, the United Nations and such other organisations as Council may determine.

In witness whereof, we, the Heads of State and Government of the Economic Community of West African States, have signed this Supplementary Act

Done at Ouagadougou, this 19th day of January 2007

In single original in the English, French and Portuguese languages, all three (3) texts being equally authentic.