

*Extraordinary*



# Federal Republic of Nigeria Official Gazette

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No. 55

Lagos - 6th July, 2007

Vol. 94

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*Government Notice No. 55*

This following is published as Supplement to this *Gazette* :

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Printed and Published by The Federal Government Printer, Lagos, Nigeria.  
FGP 68/62009/650R (OL 124)

Annual Subscription from 1st January, 2008 is Local : ₦15,000.00 Overseas : ₦21,500.00 [Surface Mail]  
₦24,500.00 [Second Class Air Mail] Present issue : ₦350 per copy. Subscribers who wish to obtain *Gazette*  
after 1st January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

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**NIGERIAN COMMUNICATIONS ACT 2003**  
**(2003 No. 19)**  
**Universal Access and Universal Service Regulations 2007**



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S. I. No. 31 of 2007

**NIGERIAN COMMUNICATIONS ACT, 2003  
(2003 No. 19)**

**UNIVERSAL ACCESS AND UNIVERSAL SERVICE REGULATIONS, 2007**

[1st of August, 2007]

Commence-  
ment.

**In exercise of the powers conferred upon it by Sections 70 and 120 of the Nigerian Communications Act, 2003 and of all other powers enabling it in that behalf, THE NIGERIAN COMMUNICATIONS COMMISSION hereby makes the following Regulations—**

PART I—OBJECTIVES, APPLICATIONS AND SCOPE

**1.—(1)** These Regulations are made to provide a framework for the design and Objectives. implementation of a system of universal access and universal service provision pursuant to Chapter VII of the Act and all matters related thereto.

**(2)** The ultimate objectives of the system of universal access and universal service provision described in sub-paragraph (1) of this regulation are to :

- (a)* promote greater social equity and inclusion for the people of Nigeria ; and
- (b)* contribute to national economic, social, and cultural development of Nigeria.

**2.** These Regulations apply to the provision of universal access and universal service in the whole or in any part of Nigeria.

Application  
and Scope.

PART II—ADMINISTRATION—USP BOARD

**3.** The USP Board shall be established in accordance with section 115 of the Act.

Establishment  
of USP  
Board.

**4.** The functions of the USP Board shall include the following :

Functions of  
the USP  
Board.

*(a)* supervising and providing broad policy directions for the management of the USP Fund and the USP Fund Managers ;

*(b)* appointing and removing the USP Fund Managers, in consultation with the Commission ;

*(c)* appointing and removing auditors of the USP Fund ;

*(d)* approving Operating Plans, which shall include one or more USP Programs and USP Projects and a budget for all operations and expenses of the USP Board, USP Fund Managers and all other matters to be financed by the USP Fund during the period of the Operating Plan ;

*(e)* approving standing orders to establish and regulate the activities of the USP Fund Manager, and revisions to such standing orders from time to time ;

*(f)* approving all processes, procedures, guidelines and decisions necessary to give full force and effect to these Regulations ; and

*(g)* performing all other functions assigned to the USP Board pursuant to the Act and these Regulations.

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Constitution and Initial meeting of the USP Board.

**5.** For the purposes of these Regulations, the USP Board is constituted when 6 of the total 11 USP Board members specified in section 116 (1) of the Act have been appointed in accordance with section 115 (3) of the Act.

Quarterly meeting of the USP Board.

**6.** The USP Board shall hold an ordinary meeting at least once every calendar quarter.

Quorum and votes of the USP Board.

**7.** Unless and until the USP Board specifics to the contrary in the standing orders it approves to regulate its meetings and proceedings pursuant to regulation 10, the following shall apply to the meetings of the USP Board :

(a) to achieve quorum at the meetings of the USP Board, a minimum of 6 members must be present ;

(b) when quorum is not achieved at a meeting, the USP Board shall not hold a vote on USP Board business ;

(c) a motion presented at a meeting of the USP Board shall be deemed passed where a majority of the USP Board members present at the meeting vote in favour of the motion ; and

(d) where the vote on a motion presented at a meeting of the USP Board is tied, the Chairman shall cast the deciding vote.

USP Board member compensation.

**8.** The remunerations and allowances payable to USP Board members shall be equivalent to the remunerations and allowances payable to the Commissioners on the Board of the Commission, as may be determined and reviewed from time to time in accordance with the Act.

Submission of recommendation for standing orders.

**9.** The Secretariat shall submit recommendations for standing orders to regulate the USP Board's meetings and proceedings for approval of the USP Board pursuant to regulation 10 within 1 month of the coming into force of these Regulations.

Approval of standing orders.

**10.** The USP Board shall approve standing orders to regulate its meetings and proceedings pursuant to section 117(1) of the Act within 2 months of the coming into force of these Regulations.

Provisions of standing orders.

**11.** The standing orders approved by the USP Board pursuant to regulation 10 shall include, at a minimum, provisions addressing the following issues :

(a) the processes and procedures related to the holding of ordinary USP Board meetings ;

(b) the processes and procedures related to the holding of extraordinary USP Board meetings ; and

(c) all other necessary matters for the functioning of the USP Board pursuant to the Act and these Regulations.

Tenure of USP Board Members.

**12.** Subject to sections 115 and 116 of the Act and regulations 13 and 14, and to ensure that the continuity, knowledge and experience of the USP Board is maintained, the USP Board members specified in section 116 (1) (g) of the Act shall each serve :



(a) for a maximum term of 4 years on the USP Board ; and

(b) for a term that varies in length in comparison to the other members specified in section 116 (1) (g).

**13.** A USP Board member may resign his or her office by giving 3 months written notice thereof addressed to the President through the Chairman.

Resignation of USP Board members.

**14.** Subject to regulation 15, the USP Board shall require a USP Board member to be withdrawn pursuant to its powers under section 116 (4) of the Act where the USP Board member :

Withdrawal of USP Board members.

(a) has demonstrated inability to effectively perform the duties of his office ;

(b) has been absent from 3 consecutive meetings of the USP Board without the consent of the Chairman ;

(c) is guilty of serious misconduct in relation to his duties as a USP Board member ;

(d) in the case of a person possessed of professional qualifications, he is disqualified or suspended from practising his profession in any part of the world by an order of a competent authority ; or

(e) in the case of a person appointed as a representative of an organization, he is no longer a member of the organization he was appointed to represent ; or

(f) fails to continue to meet one or more of the following requirements for USP Board members :

(i) the conflict of interest provisions contained in regulations 18 and 19,

(ii) the criteria specified for USP Board members in section 116 (2) of the Act ; or

(iii) the following criteria :

(a) he is a Nigerian citizen ;

(b) he is ordinarily resident in Nigeria ;

(c) he is not a serving member of the National Assembly, a State House of Assembly or any Local Government Council ;

(d) he is not incapacitated by any physical illness ;

(e) he has not been certified to be of unsound mind ;

(j) he is not an undischarged bankrupt ;

(g) he has not been convicted in Nigeria or elsewhere of a criminal offence, being a misdemeanour or felony ; or

(h) he has not at any time been removed from an office of trust on account of misconduct.

**14 :** **15.** Prior to requiring a USP Board member to be withdrawn pursuant to regulation

Withdrawal procedure.

(a) the USP Board shall inform the USP Board member by written notice, within a reasonable time, of its intention to require the USP Board member to be withdrawn from office and the reasons therefore ; and

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(b) the affected USP Board member shall be given a reasonable opportunity to make written submissions to the USP Board within a time period specified in the notice and such time period shall not be less than 14 days from the date of the notice ; and

(c) the USP Board shall consider the written submissions in making its final decision on requiring the USP Board member to be withdrawn from office.

Vacancy in the USP Board.

**16.** There is a vacancy in the USP Board if a member :

(a) dies ;

(b) resigns from office ;

(c) completes the term of office specified for the USP Board member ; or

(d) is removed from office in accordance with the sections 115 or 116 of the Act or regulation 14.

Filling of vacancy.

**17.** A vacancy in the USP Board shall be filled by the appointment of another person to the vacant office in accordance with sections 115 and 116 of the Act, as soon as is reasonably practicable after the occurrence of such vacancy.

Conflict of interest.

**18.** Each member of the USP Board shall present a written declaration to the USP Board, upon appointment and annually thereafter for as long as he serves the USP Board, disclosing all direct or indirect financial interests or investments in any aspect of the Nigerian communications industry that he knowingly has or that he knows any member of his immediate family to have.

Prohibition from Vote.

**19.** A member of the USP Board shall not vote on a matter before the USP Board where he or any member of his immediate family has a direct or indirect financial interest or investment in the matter.

Waiver.

**20.** The USP Board may waive, on a case by case basis, the application of the prohibition specified in regulation 19 to any USP Board member if the USP Board determines that the financial interest or investment of the member is not of a material nature or is minimal. In making such a determination the USP Board shall consider factors including, but not limited to the factors listed in section 8 of the Second Schedule of the Act.

Interpretation of this Part.

**21.** For the purposes of regulations 18 and 19, “immediate family” means a person’s spouse and children who are under the age of 18 years.

**PART III—ADMINISTRATION—USP SECRETARIAT**

Establishment and staffing of the USP Secretariat.

**22.** The Commission shall establish the USP Secretariat. In accordance with section 118 (3) of the Act, the Commission shall be responsible for appointment of the staff of the USP Secretariat. Such staff may be seconded from the staff of the Commission. In the alternative, the Commission may recruit suitably qualified personnel from outside the Commission, as required to meet the staffing needs of the USP Secretariat.

**23.** The Commission shall appoint an individual person to serve as the head of the USP Secretariat (the “USP Secretary”) who shall be responsible for the day to day operations of the secretariat. The USP Secretary shall be an employee of the Commission that has been seconded from the Commission’s staff to serve as the USP Secretary on a full-time basis.

Appoint-  
ment of USP  
Secretary.

**24.** The functions of the USP Secretariat in addition to those listed in the Act shall include the following :

Functions of  
the USP  
Secretariat.

(a) preparing and recommending to the USP Board the Operating Plans, which shall include one or more USP Programs and USP Projects and a budget for all operations and expenses of the USP Board, USP Secretariat, USP Fund Managers and all other matters to be financed by the USP Fund during the period of the Operating Plan ;

(b) preparing and recommending to the Commission the standing orders to establish and regulate the structure and activities of the USP Secretariat, and revisions to such standing orders from time to time ;

(c) preparing and recommending to the USP Board the standing orders to establish and regulate the activities of the USP Fund Manager, and revisions to such standing orders from time to time ;

(d) co-ordinating with the Commission in order to carry out these functions ;

(e) preparing and recommending to the USP Board all processes, procedures, guidelines and decisions necessary to give full force and effect to these Regulations ;  
and

(f) performing all other functions assigned to the USP Secretariat pursuant to the Act and these Regulations.

**25.** All contracts involving payments from the USP Fund and all authorizations for payments from the USP Fund shall be signed in accordance with the standing orders approved by the USP Board pursuant to regulation 24 (b), and in accordance with the following additional requirements :

Signature of  
USP Fund  
contracts  
and  
authorisa-  
tions.

(a) all such contracts and authorizations must be approved by the USP Board prior to signature, in accordance with the following :

(i) where a contract or authorization is within the budget of the current Operating Plan, approved by the USP Board pursuant to regulation 37, USP Board approval of the contract or authorization shall be deemed to result from approval of the Operating Plan,

(ii) where a contract or authorization falls outside the budget of the current Operating Plan approved by the USP Board, the USP Secretary shall obtain a separate USP Board approval for that contract or authorization ;

(b) when signing such contracts or authorizations, the persons authorized to sign by the standing order provisions shall be acting in the capacity of both an authorized representative of the USP Board and an employee of the Commission. All such contracts and authorizations shall be executed in the name of the Commission, pursuant to its standing as a body corporate pursuant to section 3 of the Act.

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Reporting to the Commission.

**26.** The USP Secretariat shall report to the Commission in accordance with such reporting requirements as may be established by the Commission.

PART IV—ADMINISTRATION—USP FUND MANAGERS

Appointment of USP Fund Managers.

**27.** In consultation with the Commission, the USP Board shall appoint an independent and competent investment management firm as USP Fund Managers pursuant to section 119 of the Act within 6 months of the coming into force of these Regulations.

Transparency in appointment.

**28.** The USP Secretariat shall conduct a public, transparent and competitive selection process to select an investment management firm for recommendation to the USP Board pursuant to regulation 29.

Recommendation of Fund Manager.

**29.** The USP Secretariat shall recommend an investment management firm to serve as USP Fund Managers for approval of the USP Board pursuant to regulation 27 within 3 months of the coming into force of these Regulations.

Reporting by USP Fund Managers.

**30.** Pursuant to section 119 (1) (g) of the Act, the USP Fund Managers shall report every quarter to the USP Board and the USP Secretariat, at least two weeks-in advance of the ordinary meeting of the USP Board held every calendar quarter, on the status of the USP Fund, including :

(a) a report on the financial situation and performance of the USP Fund, including a :

(i) statement of the current amount of monies or other investments held in USP Fund accounts, and

(ii) description of the cash management-procedures used to ensure maximum return on investments while meeting short-term cash requirements for disbursements of the USP Fund ;

(b) a report on the Commission's USP Contribution ;

(c) where the Commission has established a USP Levy pursuant to regulation 72, a report on the USP Levy, including the :

(i) reported gross and net revenues of all licensees subject to the USP Levy,

(ii) amount of resulting USP Levy,

(iii) USP Levy amounts collected; and (iv) USP Levy amounts outstanding.

Preparation and submission of recommendation.

**31.** In consultation with the Commission, the USP Secretariat shall prepare and submit recommendations for standing orders to establish and regulate the activities of the USP Fund Managers for approval of the USP Board pursuant to regulation 32 within 4 months of the coming into force of these Regulations.

USP Fund Managers standing orders.

**32.** The USP Board shall approve standing orders to establish and regulate the activities of the USP Fund Managers pursuant to section 119 of the Act within 6 months of the coming into force of these Regulations.

**33.** The standing orders approved by the USP Board pursuant to regulation 32 shall include provisions addressing but not limited to the following issues:

Provision of the USP Fund Managers standing orders.

(a) the processes and procedures to be followed in carrying out the responsibilities of the USP Fund Manager as specified in section 119 (1) of the Act, including the interaction of the USP Fund Manager with the USP Board and the USP Secretariat in carrying out such responsibilities; and

(b) all other necessary matters for the functioning of the USP Fund Manager pursuant to the Act and these Regulations.

**PART V—CO-ORDINATION BETWEEN USP BOARD AND COMMISSION**

**34.** In all matters where the USP Board is to work in consultation or co-ordination with the Commission pursuant to the Act or these Regulations, the USP Secretariat shall :

General Co-ordination.

(a) develop an initial recommendation for discussion with the Commission, and such initial recommendation shall be in accordance with the policies and directions of the USP Board ;

(b) then work with the Commission to develop the initial recommendation into a recommendation that is acceptable to the USP Board ; and

(c) then present the recommendation to the USP Board for its approval or further direction.

**PART VI—USP OPERATING PLANS**

**35.** The USP Secretariat shall prepare USP Programs and USP Projects as follows :

(a) “USP Programs” are the general macro-level USP initiatives aimed at achieving one or more of the USP Objectives, typically over the course of several years. USP Programs shall define specific targets in terms of specific sets of networks and/or services to be implemented in stages over the course of the USP Program ;

(b) “USP Projects” are the specific micro-level implementation activities related to each USP Program. One or more USP Projects may be implemented at the same time under a given USP Program. USP Projects may be designed by the USP Secretariat or may be proposed by other persons for consideration of the USP Secretariat.

**36.** The USP Secretariat shall prepare a strategic management plan for the approval of the USP Board setting out its Vision, Mission and objective and incorporating its long term plans over a five year period. The strategic management plan shall be reviewed from time to time.

Strategic management plan.

**37.** The USP Board shall, from time to time, and at least once a year, approve a plan to direct the operations of the USP Board and USP Fund Managers in implementing the specific USP Programs and USP Projects included in the plan (the “Operating Plan”).

Annual operating Plans.

**38.** The USP Secretariat shall, from time to time, and at least once a year, prepare an Operating Plan for approval of the USP Board.

Preparation of an operating plan.

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Provisions of an operating plan.

**39.** Each Operating Plan shall include one or more USP Programs and USP Projects, and a budget for all operations and expenses of the USP Board, USP Secretariat, USP Fund Managers and all other matters to be financed by the USP Fund during the period of the Operating Plan.

Initial operating plan.

**40.** The USP Secretariat shall prepare an initial Operating Plan for approval of the USP Board within 9 months of the coming into force of these Regulations.

Approval of an initial operating plan.

**41.** The USP Board shall approve an initial Operating Plan within 12 months of the coming into force of these Regulations.

Provisions of an initial operating plan.

**42.** The initial Operating Plan shall include the following :

(a) definitions for the following terms (the “Basic USP Terms”), in accordance with regulation 44 and Section 113 of the Act :

(i) “designated population”, “institutions”, “unserved areas” “underserved areas” and “underserved groups within a community” (together the “USP Areas and Populations”) ; and

(ii) “universal access”, “universal service”, “universal coverage” and “served areas”.

(b) USP Targets and USP Priorities with respect to achieving universal access and universal service in the USP Areas and Populations (the “USP Objectives”) as follows :

(i) “USP Targets” are the specific goals for achievement of both universal access and universal service, or either universal access or universal service as the case may be, for one or more of the USP Areas and Populations. Such goals may be expressed in number of years or another quantitative basis.

(ii) “USP Priorities” represent the relative importance of the USP Targets as reflected in the comparative emphasis and sequencing of the USP Targets.

(c) one or more initial USP Programs and USP Projects ;

(d) identification of which specific geographic areas and populations of Nigeria are to be included in the USP Areas and Populations covered by each USP Project included in the initial Operating Plan ; and

(e) any other information required to be included in the initial Operating Plan by these Regulations.

Basic USP terms.

**43.** For the purposes of these Regulations to achieve :

(a) “universal access” means that 100% of a designated population can obtain, at a minimum, public access to a particular service at a specified quality, through reasonably available and affordable public or community facilities ; and

(b) “universal service” means that 100% of a designated population are reasonably able to privately subscribe to and use a particular service at a specified quality on an individual, household or institutional basis.

**44.** As initial definitions to be confirmed or modified in the initial Operating Plan, the Basic USP Terms shall have the meanings identified as follows :

Interpreta-  
tion of some  
basic terms  
of this part.

(a) in reference to universal access :

(i) “served areas” means the geographic areas where universal access is currently available,

(ii) “unserved areas” means the geographic areas where no level of access is currently available,

(iii) “underserved areas” means geographic areas where some level of access is currently available but where universal access is not currently available,

(iv) “designated population” means the individuals, households, groups, communities, institutions, etc. determined by the USP Secretariat to be the target beneficiaries of universal access,

(v) “institutions” means the public entities included in a designated population, which may include, but are not limited to, educational, health, administrative and other public entities, and

(vi) “underserved groups within a community” means the groups included in a designated population, which consist of a significant but not majority proportion of individuals within a community that share a set of distinct characteristics and that, unlike the rest of the community, do not have universal access ;

(b) in reference to universal service :

(i) “served areas” means the geographic areas where universal service is currently available,

(ii) “unserved areas” means the geographic areas where no level of service is currently available,

(iii) “underserved areas” means geographic areas where some level of service is currently available but where universal service is not currently available,

(iv) “designated population” means the individuals, households, groups, communities, institutions, etc. determined by the USP Secretariat to be the target beneficiaries of universal service,

(v) “institutions” means the public entities included in a designated population, which may include, but are not limited to, educational, health, administrative and other public entities, and

(vi) “underserved groups within a community” means the groups included in a designated population, which consist of a significant but not majority proportion of individuals within a community that share a set of distinct characteristics and that, unlike the rest of the community, do not have universal service.

**45.** In preparing the Operating Plan, the USP Secretariat shall have regard to the scope of the activities to be financed by the USP Fund (the “Scope of the USP Fund”) as estimated by the USP Secretariat for the five year period commencing on the expected implementation date of the Operating Plan. The Scope of the USP Fund shall be determined by the USP Secretariat based on the :

Scope of the  
USP Fund.

(a) projected amount of USP Fund monies available over the course of the five year period commencing on the expected implementation date of the Operating Plan ;

(b) USP Objectives ; and

(c) issues specified in regulation 46.

Analysis and decisions making.

**46.** In determining the Scope of the USP Fund, the USP Secretariat shall undertake analysis and make related decisions with respect to the following issues :

(a) whether the USP Fund shall provide universal access or universal service or both to the USP Areas and Populations ;

(b) what specific types of services and network facilities are to be provided to the USP Areas and Populations, in accordance with the following :

(i) as an initial priority to be confirmed or modified in the initial Operating plan, the USP Secretariat shall focus on the provision of voice service, Internet service, and the related network facilities to the USP Areas and Populations, and

(ii) the USP Secretariat may consider any available technology in preparing definitions for “voice service”, “Internet service” and “related network facilities” for the purposes of these Regulations, and may modify the definitions from time to time to take into account technological developments ;

(c) whether the USP Fund is to be used to finance the maintenance of existing services and network facilities for the USP Areas and Populations or only the provision of new networks and services for the USP Areas and Populations, in accordance with the following :

(i) as an initial priority to be confirmed or modified in the initial Operating Plan, the USP shall focus exclusively on the provision of new services, and

(ii) network facilities to the USP Areas and Populations ;

(d) what methodology and economic criteria are to be used for selecting which types of USP Projects are eligible to receive financing from the USP Fund, in accordance with the following :

(i) as an initial methodology to be confirmed or modified in the initial Operating Plan, the USP Secretariat shall prepare a financial analysis that estimates the comparative financial characteristics and subsidy requirements of different possible USP Projects that could be undertaken to provide the services and network facilities designated by the USP Secretariat to the USP Areas and Populations, and

(ii) based on procedures to be developed by the USP Secretariat, the USP Secretariat shall categorize these possible USP Projects as follows :

“Commercially Profitable USP Projects” - such USP Projects are estimated by the USP Secretariat to be commercially profitable without any subsidy,

“Commercially Unprofitable USP Projects”— for such USP Projects to be commercially profitable, the USP Secretariat estimates a subsidy requirement of less than 50% of the estimated USP Project capital costs,



“Commercially Unviable USP Projects” - for such USP Projects to be commercially profitable, the USP Secretariat estimates a subsidy requirement:

- (a) of more than 50% of the estimated USP Project capital costs ; or
- (b) for ongoing operating costs after a start-up period of time determined to be reasonable for the USP Project by the USP Secretariat ;
- (iii) as initial economic criteria to be confirmed or modified in the initial Operating Plan :

(a) Commercially Unprofitable USP Projects shall be eligible to receive financing from the USP Fund and shall be the primary focus of the USP Board.

(b) Commercially Unviable USP Projects and Commercially Profitable USP Projects shall be eligible to receive financing from the USP Fund, but shall be a secondary focus of the USP Board. Such USP Projects shall only receive financing where the USP Board determines there are strong social, economic or other strategic development reasons for undertaking such USP Projects.

**47.** One or more of the following, as established in the initial Operating Plan, may be revised, in whole or in part, in subsequent Operating Plans approved by the USP Board :

Revising by Subsequent operating plans.

- (a) the Basic USP Terms, including, but not limited to, the USP Areas and Populations ;
- (b) the USP Objectives, including, but not limited to, one or more of the USP Targets and/or USP Priorities ; and
- (c) the Scope of the USP Fund, including, but not limited to, the types of USP Projects that are eligible to receive financing from the USP Fund and/or one or more of the other components of the Scope of the USP Fund.

PART VII—COMPETITIVE SELECTION PROCESS

**48.** USP Projects shall be awarded to one or more bidders, as the case may be, using a competitive selection process designed and implemented by the USP Secretariat in accordance with these Regulations.

Requirement to use competitive selection processes.

**49.** The competitive selection processes used by the USP Secretariat may include minimum subsidy auctions or such other processes designed by the USP Secretariat that are in accordance with these Regulations. As an initial position to be confirmed or modified in the initial Operating Plan, the USP Secretariat shall use minimum subsidy auctions as its preferred form of competitive selection process.

Use of minimum subsidy auctions.

**50.** Both service providers that are current Nigerian licensees and parties that are potential new entrants to the Nigerian communications sector shall be eligible to bid in a competitive selection process, subject to the qualification criteria established for the competitive selection process.

Eligibility to bid.

**51.** The publicity for the competitive selection process for each USP Project shall :

Publicity.

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(a) be sufficient to notify a reasonable pool of potential bidders in advance of the competitive selection process ; and

(b) conform, at a minimum, with the Public Notice requirements specified in Regulations 63 to 65.

Criteria for evaluation.

**52.** The USP Secretariat shall develop qualification criteria which bidders must meet or exceed to be eligible for award of a USP Project Agreement and USP Licence.

Development of specific qualification criteria.

**53.** Specific qualification criteria shall be developed for each USP Project to establish to the satisfaction of the USP Secretariat that qualified bidders are capable of successfully undertaking the USP Project, and shall address at least the following matters :

(a) the bidder must demonstrate that it has a financial capacity sufficient to implement the USP Project ;

(b) the bidder must demonstrate that it has operational experience sufficient to implement the USP Project ;

(c) the bidder must demonstrate that it is in compliance with any existing licences held by the bidder ; and

(d) the bidder must demonstrate that it is otherwise eligible for award of the USP Project Agreement and USP Licence under the laws of Nigeria and any other applicable requirements.

Evidentiary requirements.

**54.** Evidentiary requirements for bidders to demonstrate compliance with the qualification criteria for each USP Project shall also be established by the USP Secretariat.

Evaluation, award and notification.

**55.** The USP Secretariat shall evaluate bids for each USP Project as follows :

(a) all bids submitted prior to the deadline specified in the request for proposals (RFP) shall be reviewed ;

(b) a determination shall be made regarding whether a bid is compliant with each of the qualification criteria established for the USP Project ;

(c) all bids will be separated into two categories :

(i) qualified bids ; and

(ii) unqualified bids ;

(d) unqualified bids shall be disqualified and removed from further consideration in a competitive selection process, and notice of same shall be sent to the unqualified bidders ;

(e) qualified bids shall be eligible for further consideration in a competitive selection process as follows :

(i) where the competitive selection process is a minimum subsidy auction the financial bids of each qualified bidder shall be reviewed and the qualified bidder that has submitted the lowest financial bid shall be awarded the USP Project Agreement and USP Licence, and notice of same shall be sent to the qualified bidders,

(ii) where the competitive selection process is another process designed by the USP Secretariat, the USP Project Agreement and USP Licence shall be awarded to a qualified bidder in accordance with the rules of award established for that process, and notice of same shall be sent to the qualified bidders,

(iii) where the bidder awarded the USP Project Agreement and USP Licence does not execute the USP Project Agreement, collect the USP Licence or comply with any other requirements of the competitive selection process in the time period specified by the USP Secretariat, another qualified bidder shall be awarded the USP Project Agreement and USP Licence, and notice of same shall be sent to the qualified bidders, in accordance with the following:

(a) “where the competitive selection process is a minimum subsidy auction”, the qualified bidder that has submitted the next lowest financial bid shall be awarded the USP Project Agreement and USP Licence ; and

(b) “where the competitive selection process is another process designed by the USP Secretariat”, the USP Project Agreement and USP Licence shall be awarded to another qualified bidder in accordance with the rules of award established for that process.

**56.** Bidders shall be disqualified and removed from further consideration in a competitive selection process for anyone or more of the following reasons :

Disqualification.

(a) failure to submit the bid by the prescribed deadline ;

(b) failure to submit a complete bid in accordance with the RFP ;

(c) failure to comply with any of the procedures or other requirements established by the RFP ;

(d) failure to submit the Bid Bond amount specified in the RFP ;

(e) serious inaccuracy or misrepresentation of any material facts in any part of the bid ;

(f) any “corrupt practice”, meaning the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in relation to the competitive selection process established by the RFP, the execution of the USP Project Agreement or issuance of the USP Licence ;

(g) any “fraudulent practice”, meaning a misrepresentation of facts in order to influence the results of the competitive selection process established by the RFP, the execution of the USP Project Agreement or issuance of the USP Licence to the detriment of the USP Board ;

(h) any “collusive practice”, meaning a scheme or arrangement between two or more bidders (prior to or after bid submission), with or without the knowledge of the USP Board, designed to establish bid prices at artificial, non-competitive levels and to deprive the USP Board of the benefits of free and open competition ; and

(i) any “coercive practice”, meaning harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the competitive selection process established by the RFP, or to affect the execution of the USP Project Agreement or issuance of the USP Licence.

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Termination and revocation of USP Licence without compensation.

**57.** If evidence of any of the activities referred to in regulation 56 is disclosed after the USP Project Agreement and USP Licence have been awarded, the USP Board, in consultation with the Commission, may terminate the USP Project Agreement and revoke the USP Licence without compensation. The provisions of this regulation are in addition to any criminal or civil legal action which may be available to or taken by any government or regulatory authority.

Declaration of a bidder as ineligible.

**58.** The USP Board shall declare a bidder ineligible, either indefinitely or for a stated period of time, to be awarded a USP Project if it at any time determines that the bidder has engaged in corrupt, fraudulent, collusive or coercive practices in applying for, or in executing, a USP Project.

Written notice to be sent to the bidder by the USP Board before disqualification, etc.

**59.** Before taking action pursuant to regulations 56, 57 or 58, the USP Board shall send a written notice to the bidder identifying the circumstances and practices relied on by the USP Board to support such action, and inviting the bidder to submit a written response within a period of not less than 10 days from receipt of the notice.

Cancellation of competitive selection process.

**60.** Where less than two qualified bids have been submitted prior to the deadline specified in the RFP, the USP Secretariat shall cancel the competitive selection process without awarding of a USP Project Agreement and USP Licence.

USP Secretariat to undertake a review in respect of an insufficient number of qualified bids submitted.

**61.** Where a competitive selection process has been cancelled pursuant to regulation 60, the USP Secretariat shall undertake a review to determine the most likely reasons that an insufficient number of qualified bids were submitted. Based on the results of this review, the USP Secretariat may :

- (a) restart the competitive selection process in its original form ;
- (b) restart the competitive selection process following revision of one or more of its terms and conditions, including, but not limited to, the subsidy available ; or
- (c) abandon the competitive selection process.

**PART VIII—COMPETITIVE SELECTION PROCESS DOCUMENTS**

Document requirements.

**62.** For the competitive selection process used to select a service provider to implement each USP Project, the USP Secretariat shall prepare and use the documents specified in regulation 63, or such other documents as determined by the USP Secretariat.

Public notice.

**63.—(1)** The USP Secretariat shall issue a public notice (to be known as “the Public Notice”) to announce the competition for the USP Project and alert potential bidders.

(2) The Public Notice shall be issued on the Commission website and in at least two widely circulating national newspapers in Nigeria. Where parties that are potential new entrants to the Nigerian communications sector are eligible to bid in a competitive selection process, the Public Notice shall also be issued in at least one reputable international periodical or trade publication of wide circulation, as determined by the USP Secretariat.

(3) The Public Notice shall contain :

- (a) a brief description of the USP Project ;
- (b) an indication of the date on which the RFP for the USP Project shall be made available ; and
- (c) a telephone number, e-mail address and mail address at which potential bidders may contact the USP Secretariat for further information regarding the USP Project.

(4) The Public Notice shall be in a standard form approved by the USP Board.

**64.**—(1) The USP Secretariat shall issue a request for proposals document (to be known as the “Request for Proposals” or “RFP”) to specify the details of the USP Project and the related competitive selection process for potential bidders.

Request for proposals.

(2) The RFP shall be in a standard form approved by the USP Board.

(3) The RFP shall be issued on the Commission website, either concurrently with or subsequent to the issuance of the Public Notice for the USP Project.

(4) The RFP shall contain detailed descriptions of :

- (a) the technical and operational requirements of the USP Project ;
- (b) the maximum subsidy available from the USP Fund for the USP Project ; and
- (c) the competitive selection process for the USP Project, including :
  - (i) an estimated timeline for key steps in the competitive selection process ;
  - (ii) the minimum service, qualification and other requirements for eligible bidders, and related evidentiary requirements ; and
  - (iii) the rules for evaluating bids and selecting one or more winning bidders.

**65.**—(1) The USP Secretariat shall specify in the RFP a form of financial security (hereafter in these Regulations referred to as the “Bid Bond”) to be submitted to the USP Secretariat by bidders for a USP Project to secure their bids.

Bid bond.

(2) The Bid Bond shall be in the form of a stand-by letter of credit issued by a reputable bank located in or outside of Nigeria that is acceptable to the USP Secretariat, or such other form as determined by the USP Secretariat.

(3) The specified form of Bid Bond shall contain :

- (a) the required amount of the Bid Bond ;
- (b) details of the events triggering forfeiture of the Bid Bond ; and
- (c) the date by which the Bid Bond will be released by the USP Secretariat.

(4) All Bid Bonds shall be released by the USP Secretariat :

- (a) in accordance with the requirements specified in the RFP ; and
- (b) not later than 30 days following execution of the USP Project Agreement and issuance of the Licence to the successful bidder for the USP Project.

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USP Project Agreement.

**66.**—(1) The USP Secretariat shall specify in the RFP a form of agreement (hereafter in these Regulations referred to as the “USP Project Agreement”) to be awarded by the USP Board and executed between the Commission and a winning bidder to establish the winning bidder’s obligation to implement the USP Project, the USP Board’s obligation to pay the corresponding subsidy and all related necessary matters, as determined by the Secretariat.

(2) The specified form of USP Project Agreement shall be a standard form approved by the USP Board prior to issuance of the RFP.

USP Licence.

**67.**—(1) The USP Secretariat shall specify in the RFP a form of licence (hereafter in these Regulations referred to as “USP Licence”) to be issued by the Commission to a winning bidder to authorize the winning bidder to provide the services necessary to implement the USP Project.

(2) The specified form of USP Licence shall be a standard form approved by both the USP Board and the Commission prior to issuance of the RFP.

(3) If the service provider awarded a USP Project Agreement already holds a licence issued by the Commission to provide the services required implementing the USP Project, the USP Secretariat may determine that it is not necessary to issue the USP Licence to the service provider.

The USP Board and USP Secretariat’s co-ordination on matters relating to the licensing of service providers.

**68.**—(1) The USP Board and USP Secretariat shall coordinate with the Commission on all matters relating to the licensing of service providers to implement USP Projects, which shall conform at all times with the licensing requirements of the Act.

(2) Matters for co-ordination with the Commission pursuant to sub-regulation (1) of this regulation include :

- (a) the form and content of USP Licences ;
- (b) the eligibility requirements for licensees ; and
- (c) the licensing process.

The performance Bond.

**69.**—(1) The USP Secretariat shall specify in the RFP a form of financial security (hereafter in these Regulations referred to as “the Performance Bond”) to be submitted to the USP Secretariat by a winning bidder for a USP Project to secure its USP Project obligations.

(2) The Performance Bond shall be in the form of a stand-by letter of credit issued by a reputable bank located in or outside of Nigeria that is acceptable to the USP Secretariat, or such other form as determined by the USP Secretariat.

(3) The specified form of Performance Bond shall contain :

- (a) the required amount of the Performance Bond ;
- (b) details of the events triggering forfeiture of the Performance Bond ; and
- (c) the date by which the Performance Bond will be released by the USP Secretariat.

(4) All Performance Bonds shall be released by the USP Secretariat in accordance with the requirements specified in the USP Agreement.

PART IX—FINANCING OF THE USP FUND

**70.** The USP Fund shall be financed by one or more of :

Financing  
sources.

(a) the sources specified in section 114 (2) of the Act ; and

(b) such other sources as specified in this Part IX.

**71.—**(1) In accordance with section 114(2)(b) of the Act, the Commission shall make financial contributions (hereafter in these Regulations referred to as the “Commission USP Contributions”) to the USP Fund based on a portion of the annual levies paid to the Commission by licensees, as determined pursuant to sub-regulation (2) of this regulation.

Commission  
USP  
contributions.

(2) The Commission shall determine, from time to time, the amount of the Commission USP Contributions, in accordance with the following :

(a) the initial amount of the Commission USP Contributions shall be equal to 1% of net revenues of the licensees from which the Commission collects annual levies, as “net revenues” is defined by the Commission for the purposes of calculating its annual levies.

(b) prior to making a determination to increase or decrease the amount of the Commission USP Contributions, the Commission shall take into consideration :

(i) the estimated financing needs of the current USP Operating Plan ;

(ii) any related recommendations prepared and submitted to the Commission by the USP Secretariat ; and

(iii) any other information the Commission determines to be appropriate.

(3) The Commission USP Contributions shall be paid each calendar quarter into the USP Fund, in accordance with procedures established between the Commission and the USP Board.

**72.—**(1) Where the Commission determines that the Commission USP Contributions shall be insufficient to meet the estimated financing needs of the current USP Operating Plan, the Commission shall establish a fee (hereafter in these Regulations referred to as the “USP Levy”) to be levied on licensees of the Commission to support USP activities.

Establishment  
of USP Levy.

(2) The USP Levy established in sub-regulation (1) of this regulation shall be charged in accordance with procedures determined by the Commission. The procedures shall be published on the Commission website.

(3) The amount of the USP Levy shall—

(a) be set from time to time by the Commission to correspond to the difference between the estimated Commission USP Contributions and the estimated financing needs of the current USP Operating Plan, or such other amount the Commission determines to be appropriate ;

(b) be charged only to the licensees from which the Commission collects its annual levies; and

(c) not exceed 1% of net revenues of the licensees from which the Commission collects annual levies, as “net revenues” is defined by the Commission for the purposes of calculating its annual levies.

(4) The USP Levy shall be paid into the USP Fund, in accordance with procedures established between the Commission and the USP Board.

USP Fund surpluses.

**73.** The difference between the amount collected or received by the USP Fund and the amount actually disbursed pursuant to the current Operating Plan shall be retained by the USP Fund for the financing of future Operating Plans.

Restrictions on allocations of USP Fund monies.

**74.** The only non-USP Project subsidy expenses permitted to be charged to the USP Fund are the administrative and operational expenses for the USP Fund in accordance with section 114 (3) of the Act.

Estimation of USP Fund’s administrative and operational expenses.

**75.—(1)** The administrative and operational expenses for the USP Fund shall be estimated in each Operating Plan.

(2) The actual administrative and operational expenses charged to the USP Fund shall in no case exceed the total of the estimated administrative and operational expenses in the current Operating Plan plus an additional amount for unexpected expenses equal to 3% of the USP Fund.

USP Fund accounts.

**76.** The USP Fund shall consist of one or more accounts established in one or more reputable Nigerian banks with direct foreign currency trading rights.

Investment of the USP Fund assets.

**77.** The assets of the USP Fund may be invested in one or more of the following :

(a) fixed bank deposits ;

(b) treasury bills and securities of the Government ; and

(c) other means approved by the USP Board and in accordance with applicable financial regulations.

**PART X—AUDIT AND REPORT**

Financial year.

**78.** The financial year of the USP Board shall start on January 1st of each year and end on December 31st of the same year.

Records and audit.

**79.—(1)** The USP Board shall keep proper records of the USP Fund accounts in respect of each financial year and shall cause the USP Fund accounts to be audited within 6 months from the end of each financial year by auditors whose appointment shall be approved by the USP Board and shall be subject to reappointment on an annual basis provided that such auditors are on the list of auditors approved from time to time by the Auditor-General for the Federation.

(2) The USP Secretariat shall recommend auditors of the USP Fund accounts for approval of the USP Board pursuant to sub-regulation (1) of this regulation within 9 months of the coming into force of these Regulations.

Annual Report.

**80.—(1)** The USP Board shall prepare and submit an annual report to the National Assembly, through the President, not later than 6 months after the end of each financial year.



(2) The USP Board annual report shall include, but not be limited to :

- (a) a description of the activities of the USP Board for the preceding financial year ;
- (b) the USP Fund's audited accounts for the year under review together with the auditors report thereon ;
- (c) the most recent USP Fund Managers quarterly report ;
- (d) the most recent approved Operating Plan ; and
- (e) any other information the USP Board considers relevant and appropriate for inclusion in the USP Board annual report.

**81.**—(1) The USP Secretariat shall establish a website for the USP Fund within 6 months of the coming into force of these Regulations.

USP Fund  
Website.

(2) The USP Fund website shall contain information regarding the activities undertaken by the USP Secretariat for the promotion of universal access and universal service in Nigeria. Such information shall include, but not be limited to :

- (a) a description of the functions of the USP Board and the USP Secretariat ;
- (b) a description of the individual USP Board members and the USP Director ;
- (c) an organization chart of the USP Secretariat, including the relationship between each of the departments ;
- (d) the Act, these Regulations and any subsequent legislation, regulations, guidelines or procedures regarding the promotion of universal access and universal service in Nigeria ;
- (e) the USP Board annual reports ;
- (f) the USP Fund Managers quarterly reports ;
- (g) the approved Operating Plans ;
- (h) all documents required to be published on the USP Board website pursuant to the Act or these Regulations ; and
- (i) any other information the USP Secretariat considers relevant and appropriate for inclusion on the USP Board website.

#### PART XI—TRANSITIONAL PROVISIONS

**82.**—(1) If the USP Board is not yet constituted at the time these Regulations come into force, the Commission may undertake activities for the promotion of universal access, universal coverage and universal service in Nigeria. Such activities shall be undertaken in accordance with the powers of the Commission under the Act and in a manner consistent with the principles established in these Regulations.

USP activities  
of the  
Commission.

(2) If the Commission has undertaken activities for the promotion of universal access universal coverage and universal service in Nigeria in accordance with sub-regulation (1) of this regulation, then within 2 months of the coming into force of these Regulations, the following shall occur :

- (a) the Commission shall provide the USP Board with a report on any USP related activities undertaken by the Commission pursuant to this regulation, and

discuss the appropriateness of transferring responsibility for management of such ongoing activities to the USP Board ; and

(b) where the Commission determines it is appropriate to do so, the Commission may take steps to transfer to the USP Board the responsibility for management of any USP-related activities undertaken by the Commission pursuant this section which are in progress at the time the USP Board is constituted. Any such transfer of responsibility for management shall be in accordance with procedures established between the Commission and the USP Board.

PART XII—GENERAL

Offences and penalties.

**83.** Any person who contravenes any of the provisions of these Regulations is in breach of these Regulations and is liable to such fines, sanctions or penalties as may be determined by the Commission, from time to time.

Interpretation.

**84.—(1)** The terms and expressions defined in the Act shall have the same meaning in these Regulations and also in these Regulations, unless the context otherwise requires—

2003 No. 19.

“*Act*” means the Nigerian Communications Act, 2003 and any succeeding legislation thereto ;

“*Basic USP Terms*” has the meaning ascribed in regulation 42 (a) ;

“*Bid Bond*” means the financial security to be submitted to the USP Secretariat by bidders to secure their bids for a USP Project ;

“*coercive practice*” has the meaning ascribed in regulation 56 (i) ;

“*collusive practice*” has the meaning ascribed in regulation 56 (h) ;

“*Commercially Profitable USP Projects*” means USP Projects that are estimated by the USP Secretariat to be commercially profitable without any subsidy ;

“*Commercially Unprofitable USP Projects*” means USP Projects that, to be commercially profitable, the USP Secretariat estimates a subsidy requirement of less than 50% of the estimated USP Project capital costs ;

“*Commercially Unviable USP Projects*” means USP Projects that, to be commercially profitable, the USP Secretariat estimates a subsidy requirement :

(a) of more than 50% of the estimated USP Project capital costs, or

(b) for ongoing operating costs after a start-up period of time determined to be reasonable for the USP Project by the USP Secretariat ;

“*Commission*” means the Nigerian Communications Commission ;

“*Commission USP Contributions*” has the meaning ascribed in regulation 71 (1) ;

“*corrupt practice*” has the meaning ascribed in regulation 56 (1) ;

“*designated population*” has the meaning ascribed in regulation 44 ;

“*fraudulent practice*” has the meaning ascribed in regulation 56 (g) ;

“*institutions*” has the meaning ascribed in regulation 44 ;

“*Operating Plan*” means the plan to direct the operations of the USP Board, USP Secretariat and USP Fund Managers in implementing the specific USP Programs and USP Projects included in the plan, prepared in accordance with regulation 37 ;

“*Performance Bond*” means the financial security to be submitted to the USP Secretariat by a winning bidder for a USP Project to secure its USP Project obligations ;

“*Public Notice*” means a public notice to announce the competition for a USP Project and alert potential bidders ;

“*Regulations*” means these Universal Access and Universal Service Regulations 2007 ;

“*Request/or Proposals*” or “RFP” means a request for proposals document to specify the details of a USP Project and the related competitive selection process for potential bidders, issued by the USP Secretariat pursuant to regulation 64 ;

“*Scope of the USP Fund*” has the meaning ascribed in regulation 45 ;

“*served areas*” has the meaning ascribed in regulation 44 ;

“*underserved areas*” has the meaning ascribed in regulation 44 ; “underserved groups within a community” has the meaning ascribed in regulation 44 ;

“*universal access*” means that 100% of a designated population can obtain, at a minimum, public access to a particular service at a specified quality, through reasonably available and affordable public or community facilities ;

“*universal coverage*” means that 100% of a designated population can privately subscribe to a particular service on an individual, household or institutional basis ;

“*universal service*” means that 100% of a designated population are reasonably able to privately subscribe to and use a particular service at a specified quality on an individual, household or institutional basis ;

“*unserved areas*” has the meaning ascribed in regulation 44 ;

“*USP Areas and Populations*” has the meaning ascribed in regulation 42 (a) (i) ;

“*USP Secretary*” means the individual person appointed to serve as the head of the USP Secretariat pursuant to regulation 23 ;

“*USP Levy*” has the meaning ascribed in regulation 72 (1) ;

“*USP Licence*” means a licence to be issued by the Commission to a winning bidder to authorize the winning bidder to provide the services necessary to implement a USP Project ;

“*USP Objectives*” has the meaning ascribed in regulation 42 (b) ;

“*USP Priorities*” means the representation of the relative importance of the USP Targets as reflected in the comparative emphasis and sequencing of the USP Targets ;

“*USP Programs*” means the general macro-level USP initiatives aimed at achieving one or more of the USP Objectives, typically over the course of several years, prepared in accordance with regulation 35 ;

“*USP Projects*” means the specific micro-level implementation activities related to each USP Program, prepared in accordance with regulation 35 ;

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“*USP Project Agreement*” means an agreement to be executed between the USP Board and a winning bidder to establish the winning bidder’s obligation to implement a USP Project, the USP Board’s obligation to pay the corresponding subsidy and all related necessary matters; and

“*USP Targets*” means the specific goals for achievement of universal access and/or universal service, as the case may be, for one or more of the USP Areas and Populations.

(2) Where in these Regulations the context so requires, words in the singular include the plural and words in the plural include the singular.

Citation.

**85.** These Regulations may be cited as the Universal Access and Universal Service Regulations, 2007.

MADE at Abuja this 3rd day of July, 2007.

ENGR ERNEST NDUKWE, (OFR)  
*Executive Vice-Chairman*

EXPLANATORY NOTE

*(This note does not form part of the above Regulations  
but is intended to explain its purport)*

The Regulations provides for a framework for the design and implementation of a system of universal access and universal service provision in the whole or in any part of Nigeria.