REVISED SUPPLEMENTARY ACT A/SA.1/12/17 ON UNIVERSAL ACCESS AND UNIVERSAL SERVICE

THE AUTHORITY OF HEADS OF STATES AND GOVERNMENT,

MINDFUL of Articles 7, 8 and 9 of the ECOWAS Treaty as amended establishing the Authority of Heads of States 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, modernise, coordinate and standardise their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilising 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 liberalisation 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, social and economic circumstances, with a minimum set of high-quality and affordable telecommunication services;

RECOGNISING that the concepts of universal access and service are 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 RECOMMENDATION of the Seventy-Ninth Ordinary Session of the Council of Ministers held in Abuja from 13 -14 December, 2017;

HEREBY AGREES 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: means public availability of and access to a basic group of telecommunications/ICT services, within the territory of the Member States of ECOWAS, are available to and accessible by all citizens, regardless of their gender, ethnic origin, disability status, socio-economic level, or geographic location, at affordable rates.

   Universal service: means private or household access to a basic group of telecommunications/ICT services, within the territory of the Member States of ECOWAS, available to and accessible by all citizens, regardless of their gender, ethnic origin, disability status, socio-economic level, or geographic location, at affordable rates.

   Public switched telephone network: a fixed or mobile 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 text, facsimile and data transmission.

   Publicly accessible communications service: service made available to the public to enable people to make and receive domestic and international voice telephone calls, text, e-mail, and other message services, and broadband data and Internet services, as well as to access emergency services by dialling 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 phones or internet access points; other specialized services; special services for disabled persons or persons having specific social needs; and non-geographic services. Such services may be provided via public access centres, such as post offices and community access centres.

Basic Group of Telecommunications/ICT Services: includes domestic and international voice telephone calls, text, e-mail, and other message services, broadband data and Internet services, as well as access to emergency services.

Broadband Services: refers to broadband services as defined by the International Telecommunications Union (ITU).

Access Gap: The 'Access Gaps Model' addresses the concepts of 'market efficiency gaps' and 'true access gaps' in ICT markets. These represent the intangible boundaries between areas where a given service is currently available, where market conditions should be able to provide service on a cost-effective, commercially sustainable basis, and areas where access will not likely be provided entirely by the market, without some form of subsidy or stimulus.

Article 2: Objectives and scope

1. The purpose of this Supplementary Act is to harmonise conditions so as to enable all citizens to connect to reliable communication networks, including broadband 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 favourable 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 and universal service

Member States shall take all necessary measures in order:

a) to identify at the highest possible political level, 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 strengthen the entity responsible for universal access and services – and/or autonomous Universal Service agencies -- and provide them with the means to play a key role in implementing universal access policies, both by promoting enabling policies that will address the market efficiency gap (letting the market deliver universal access and universal service), and at the same time devoting resources to close the true access gap;

c) to make the entities responsible for universal access and services implement policies geared towards the provision of services that are of the highest quality, reliable and affordable, and which satisfy the needs of users both present and future;

d) to develop their legal/regulatory frameworks through the ICT sector ensuring institutional and legislative reforms in line with international best practices, but with due regard for local requirements;

e) to build enough flexibility in the legislation of underlying framework ensuring new technologies and practices are easily incorporated, for example, future technologies, new ICT services, multimedia services, and broadcasting

f) to include, in the definition of universal access and service policies, all citizens and segments of the population regardless of age, disability status, gender, 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 and universal service objectives which take into account the differences between these concepts;

b) as frequently as possible at a minimum every 3 years, conduct public consultations with stakeholders to identify their needs, assess relevance of objectives and modify universal access and universal service definitions, policies, regulations and practices accordingly;

c) design universal access policies, regulations and practices to create incentives for the private sector to extend universal access to emerging communications services;

d) use a multi-pronged approach to addressing universal access and universal service challenges and opportunities, relying on complementary strategies to meet the targets that have been set, both from a supply and demand perspectives, including for example:
   i. Investments in needed infrastructure
   ii. Investments in development of information content, applications, and services of value and interest to domestic and local consumers
   iii. Investments in local ICT industry
   iv. Development of digital skills, including targeted interventions for marginalized populations
   v. Development of public access solutions, including those using new innovative types of technology such as community networks, community wifi, among others.

e) establish a fair and transparent telecommunication regulatory framework that promotes universal access to ICTs while allowing the market to address universal access and universal 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 and universal service:
   a) public access strategies must be explored in addition to private universal service strategies;

   b) both "pay and play" strategies must 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 to support their goal of achieving universal access, recognising 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, including partnerships with government authorities, companies, non-governmental organizations, social enterprises and community networks, as well as community groups;

b) implement applications such as e-education and e-government and their enabling regulatory frameworks;

c) adopt policies aimed at increasing access to the internet and broadband services, including policies that reflect diversity in culture, gender, 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 the entities responsible for universal access and services put forward initiatives for encouraging public access to broadband and internet services in schools, libraries and other community centres, making particular effort to reach marginalised communities and people, for example, persons with disabilities;

g) ensure that the entities responsible for universal access and services put forward initiatives for encouraging and incentivizing open access and infrastructure sharing models to reduce the overall costs of service provision and consequently costs to the end-users;

h) ensure that the entities responsible for universal access and services implement harmonised spectrum allocations consistent with the ITU radio communication conference process, as well as innovative uses of spectrum to support 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 points options, including the creation of public telecentres and multipurpose community access centres;

d) develop local projects and input, including content that is useful for local populations or specific marginalized groups, thereby increasing their relevance and hence their long-term financial sustainability;

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

Article 7: Availability of universal access and 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 basic services listed in this Act, regardless of their disability status, gender, ethnic origin, socio-economic level, or 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 or internet service provider are satisfied by at least one operator and may, if necessary, designate one or more service providers to that effect, such that all parts of the national territory are covered. The connections provided must include a range of services 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, as stipulated in the definitions above.

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 only subscriber names, their fixed and mobile telephone numbers, is made available to users in a form approved by the national regulatory authority;

   b) a directory, which may be printed or electronic or both, containing all ICT service providers' names, contact numbers, including consumer information lines, social media handles and annual reports as relevant, is made available to users in a form approved by the national regulatory authority;

   c) at least one telephone information service covering all listed subscribers is available to all users, including users of public access services and centres;

   d) 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 points/Centres

1. In order, among other things, to enable users not subscribed to any communications service to have access thereto, Member States undertake to ensure that public access points/centres with the basic group of communications services, including internet services, 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 access points/centres, with the aim of having at least one public access point/centre in each locality numbering 500 inhabitants or more by 31 December 2022. 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 and gap exists, Member States shall take specific measures to ensure that marginalised users, such as users with disabilities, women and girls, rural populations and groups with special social needs, have at a minimum, equivalent and free or affordable access to publicly accessible services, including emergency and directory services.

Article 13: Reviewing the scope of universal access and universal service

1. With a view to monitoring and reviewing policies, Member States must, on the one hand, adopt measurable targets for affordability following ECOWAS guidance for the affordability target as endorsed or established, 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 AND UNIVERSAL SERVICE

Article 15: Cooperation in the management of universal access and universal service

1. 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 and universal 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.

2. Cooperation shall also be exercised to support the successful management of the universal access and universal service resources, through establishment of Oversight Committees comprised of sector stakeholders (from the public, private and civil society sectors), and with the knowledge to guide the design and implementation of universal access and universal service strategy and projects to address both supply and demand related access gaps. Such Committees should be responsible to make recommendations to the entities responsible for universal access and services on how to address potential inefficiencies and lack of project implementation.

Article 16: Arrangements for implementation

1. Member States shall determine the most effective and appropriate approach for ensuring the implementation of universal access and 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 or groups including community networks, social enterprises, non-profit organizations, among others, such that all parts of the territory can be covered. Member States may designate companies or different groups to provide different components of universal access/service and/or to cover different parts of the national territory.

3. Where Member States designate companies or groups to fulfil universal access and 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 and groups

1. Member States shall ensure that the companies or groups 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 access and 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 a company or groups 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 access and universal service is provided to everyone at affordable rates, as per ECOWAS guidance on affordability targets. They may, at the request of the minister in charge of the sector, require companies and groups 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 access/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 access/service places an unjustified burden on the companies or groups designated as providers, Member States shall undertake to provide for the adoption of a method for calculating the costs of the universal access and 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 access and universal service and the relevant revenues. Relevant revenues are the direct and indirect revenues generated by the universal access and universal service.

3. The net cost of any special price-scheme offers made by an operator to certain categories of subscribers such as rural communities, marginalized population groups to ensure their access

4. to the universal service shall be deducted from that operator's contribution to the universal service fund.

5. 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 and universal 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, should be managed by neutral and independent 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.

3. All projects funded with universal access and universal service Funds and resources, must have a monitoring and evaluation plan in place.

4. The entities responsible for universal access and services must publish annual reports to assess progress and measure impact of the projects. These must be made public on the regulator's website of these entities and available for consultation as required by the public to ensure transparency and accountability.

CHAPTER VI

FINAL PROVISIONS

Article 21: Adaptation of the legislation of Member States

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 access/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 remarks 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. Member States shall take into consideration the remarks 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.

6. 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

1. Member States shall, no later than six (6) 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.

2. Where applicable Member States shall notify the Commission of the enterprises in charge of Universal Service in their territory.

Article 24: ECOWAS Universal Access Service Association

Member States shall, no later than six months following the date of entry into force of this Supplementary Act, communicate to the Commission their intention to support the establishment of an ECOWAS Universal Access Service Association, to provide a platform for knowledge sharing, regional harmonization, and support organization for the region's universal access/service agencies and initiatives. ECOWAS will pass a resolution no later than three (3) months after all Member States communicate their intention.

Article 25: Entry into force

1. This Supplementary Act shall enter into force on the date of its signature thereof by the Authority of Heads of States and Government.

3. This Supplementary Act shall be published by the ECOWAS Commission in the Official Journal of the Community within thirty (30) days after its signature, it shall also be published by each Member State in its Official Gazette thirty (30) days after notification by the Commission.

IN WITNESS WHEREOF, WE HEADS OF STATES AND GOVERNMENTOF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS SUPPLEMENTARY ACT

DONE AT ABUJA, THIS 16TH DAY OF DECEMBER, 2017

IN SINGLE ORIGINAL IN THE FRENCH, ENGLISH AND PORTUGUESE LANGUAGES, ALL THREE (3) TEXTS BEING EQUALLY AUTHENTIC.